DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 12-9490
Title: Lorenzo Prado Navarette and Jose Prado Navarette, Petitioners
v.
California
Docketed: April 1, 2013
Lower Ct: Court of Appeal of California, First Appellate District
Case Nos.: (A132353)
Decision Date: October 12, 2012
Rehearing Denied: October 30, 2012
Discretionary Court Decision Date: January 3, 2013
Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Mar 29 2013	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due May 1, 2013)
Apr 8 2013	Waiver of right of respondent California to respond filed.
Apr 24 2013	DISTRIBUTED for Conference of May 9, 2013.
May 13 2013	The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until June 3, 2013, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.
May 31 2013	Petitioners complied with order of May 13, 2013.
Jun 5 2013	DISTRIBUTED for Conference of June 20, 2013.
Jun 11 2013	Response Requested . (Due July 11, 2013)
Jul 9 2013	Order extending time to file response to petition to and including August 12, 2013.
Aug 9 2013	Brief of respondent California in opposition filed.
Aug 16 2013	Reply of petitioners Lorenzo Prado Navarette and Jose Prado Navarette filed.
Aug 22 2013	DISTRIBUTED for Conference of September 30, 2013.
Oct 1 2013	Petition for a writ of certiorari GRANTED limited to Question 1 presented by the petition.
Oct 10 2013	Motion for leave to proceed further herein in forma pauperis filed by petitioners Lorenzo Prado Navarette and Jose Prado Navarette.
Oct 10 2013	Motion to appoint counsel filed by petitioners Lorenzo Prado Navarette and Jose Prado Navarette.

Oct 28 2013	Motion DISTRIBUTED for Conference of November 1, 2013.
Nov 4 2013	Motion for leave to proceed further herein in forma pauperis GRANTED.
Nov 4 2013	Motion to appoint counsel filed by petitioners GRANTED. Paul Kleven, Esquire, of Berkeley, California, is appointed to serve as counsel for the petitioners in this case.
Nov 4 2013	SET FOR ARGUMENT Tuesday, January 21, 2014.
Nov 15 2013	Joint appendix filed.
Nov 15 2013	Brief of petitioners Lorenzo Prado Navarette and Jose Prado Navarette filed.
Nov 21 2013	CIRCULATED.
Nov 21 2013	Brief amici curiae of National Association of Criminal Defense Lawyers, et al. filed. (Distributed)
Dec 16 2013	Brief of respondent California filed. (Distributed)
Dec 23 2013	Brief amicus curiae of the United States filed. (Distributed)
Dec 23 2013	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Dec 23 2013	Brief amici curiae of Florida, 31 Other States, and the District of Columbia filed. (Distributed)
Dec 27 2013	Record Received from U.S.C.A. 1st Appellate District. The record is electronic (Not on PACER).
Jan 10 2014	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Jan 13 2014	Reply of petitioners Lorenzo Prado Navarette and Jose Prado Navarette filed. (Distributed)
Jan 21 2014	Argued. For petitioners: Paul R. Kleven, Berkeley, Cal. (Appointed by this Court.) For respondent: Jeffrey M. K. Laurence, Supervising Deputy Attorney General, San Francisco, Cal.; and Rachel P. Kovner, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.)
Apr 22 2014	Adjudged to be AFFIRMED. Thomas, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Breyer, and Alito, JJ., joined. Scalia, J., filed a dissenting opinion, in which Ginsburg, Sotomayor, and Kagan, JJ., joined.

PETITION FOR WRIT OF CERTIORARI

RECORD
AND
BRIEFS

No. 12-9490

Supreme Court, U.S.
FILED
MAR 29 2013
OFFICE OF THE CLERK

In The Supreme Court of The United States

LORENZO NAVARETTE,
JOSE P. NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FIVE

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

2. Does an anonymous tip that a specific vehicle ran someone off the road provide reasonable suspicion to stop a vehicle, where the detaining officer was only advised to be on the lookout for a reckless driver, and the officer could not corroborate dangerous driving despite following the suspect vehicle for several miles?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Lorenzo Prado Navarette and Jose Prado Navarette respectfully pray that a writ of certiorari issue to review the judgment and opinion of the First Appellate District Court of Appeal for the State of California, entered and filed in the above proceedings on October 12, 2012.

OPINIONS BELOW

The opinion of the First Appellate District Court of Appeal for the State of California appears at Appendix A to the petition and is unpublished. The opinions of the Mendocino County Superior Court appear at Appendix B to the petition and are unpublished. The order of the California Supreme Court denying a petition for review appears at Appendix C to the petition and is unpublished. The order of the First Appellate District denying a petition for rehearing appears at Appendix D to the petition and is unpublished.

JURISDICTION

The date on which the First Appellate District Court of Appeal for the State of California decided this case was October 12, 2012. A copy of that decision appears at Appendix A. A timely petition for review to the California Supreme Court was thereafter denied on January 3, 2013, and a copy of the order denying

that petition appears at Appendix C.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

> deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 23, 2008, a California Highway Patrol dispatcher working out of Mendocino County received a telephone call from a Humboldt County dispatcher, who described a pickup truck that had run someone off the roadway and was last seen five minutes before heading south on California's Highway 1, approximately 3 miles south of the county border. (Clerk's Transcript on Appeal ("CT") 51-52, 55-56, 62-63, 66-80.) The Humboldt dispatcher said that the information had come from a 911 call, but provided no further information. (CT 56-57, 59, 63.)

The information from Humboldt was routed to the computer of Sharon Odbert, another Mendocino County dispatcher, where it appeared as follows:

> Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-949925. Ran the reporting party off the roadway and was last seen approximately five ago.

(CT 71.)

Odbert broadcast the information over the radio at 3:47 p.m, stating "Attention, coastal units. BOL for ... reckless driver, 23103...." (CT 64, 71-72, 76; see

also CT 82.)

CHP Officer Thaddeus Williams was on duty in central Fort Bragg when he heard a "dispatch of a reckless driver southbound on Highway 1," in the area he was covering. (CT 87-88; see also CT 98.)[1] Williams, who received only verbal information from the dispatcher, recalled that the vehicle was described as a silver pickup truck with a specific license plate number. (CT 88, 99-100.) Williams headed north, driving a few miles behind a Sergeant Francis, who was also enroute from Fort Bragg. (CT 72-73, 88-89.)

At 4:00, Francis advised dispatch that he had passed the pickup, which was going the opposite direction just south of mile marker 69, approximately 19 miles south of the last sighting. (CT 73-74, 76-77, 80-83.) Shortly after hearing that Francis had spotted the vehicle, and while located a few miles north of a state park, Williams saw Francis following the pickup; he let both vehicles pass, and then made a U-turn to follow Francis. (CT 89-90, 100-101.) At 4:05, Francis advised dispatch that he was making a stop at the

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[1] The First Appellate District found that substantial evidence supported an implied finding by the magistrate that dispatchers had told the officers that the suspect vehicle ran the tipster off the road. (Opinion, Appendix A at 14.) Petitioner filed a petition for rehearing, arguing that the magistrate had not made that finding, which was contrary to the testimony of both Odbert and Williams, and that there was no substantial evidence to support such a finding had it been made. The petition was denied on October 30, 2012. (Appendix D.)

entrance to the state park, and Williams pulled up behind him. (CT 73-74, 83, 90, 105-106.)

Petitioner Jose Prado Navarette was a passenger in the pickup, which was being driven by petitioner Lorenzo Prado Navarette. (CT 102.) Officers searched the vehicle after detecting the smell of marijuana, and discovered four large, closed bags of marijuana in the bed. (CT 92-97, 103-105, 111-113, 118.)

In an Information filed on August 20, 2009, the Mendocino County District Attorney alleged that petitioners had transported marijuana in violation of California Health and Safety Code section 11360, subdivision (a), and possessed marijuana for sale in violation of section 11359. (Clerk's Transcript on Appeal ("CT") 40-42.)

Petitioners had previously filed a motion to suppress pursuant to California Penal Code section 1538.5, which was heard and denied as part of the Preliminary Hearing. (CT 39, 173; Reporter's Transcript on Appeal ("RT") 11; Appendix E.) After the filing of the Information, petitioner filed a motion to dismiss pursuant to California Penal Code section 995 based in part on the magistrate's denial of the motion to suppress. (CT 179-197; Appendix B.) The trial court denied the section 995 motion, as well as a motion to reconsider. (CT 209-214, 240-242, Appendix B.)

Petitioners filed a joint petition for writ of

mandate with the First Appellate District, but the Court denied the petition on timeliness and procedural grounds. (*Navarette v. Superior Court*, Case No. A127541.) Petitioners then filed a petition for review with the California Supreme Court. (*Navarette v. Superior Court*, Case No. S180366.) The California Supreme Court denied the petition on April 28, 2010.

Petitioners ultimately pled guilty to transportation of marijuana in violation of section 11360, subdivision (a), pursuant to a plea agreement. (CT 268, RT 147-148, 153-156.) On June 10, 2011, the trial court suspended imposition of judgment, placed petitioners on thirty-six months formal probation, and ordered them to serve 90 days in county jail. (CT 303-309, RT 177-178.)

Petitioners timely appealed, but the First Appellate District affirmed the judgment in an Opinion filed on October 12, 2012. (Appendix A.) The Court of Appeal denied a timely petition for rehearing on October 30, 2012. (Appendix D.) The California Supreme Court denied petitioners' timely petitions for review on January 3, 2013. (Appendix C.)

REASONS FOR GRANTING THE WRIT

The California Court of Appeal approved a seizure based on an anonymous tip that, though reliable in its "tendency to identify a determinate person," had not proven to be "reliable in its assertion

of illegality." *Florida v. J.L.* (2000) 529 U.S. 266, 272. Following the majority of federal and state court precedents, the Court of Appeal relied on *dicta* in *J.L* to fashion an automatic "drunk or reckless driver exception" to the Fourth Amendment, despite this Court's unanimous rejection of the automatic "firearm exception" that had previously crept into federal and state courts' constitutional caselaw. 529 U.S. at 272-273.

Four years ago, this Court denied a petition for *certiorari* from the Virginia Supreme Court's decision in *Harris v. Commonwealth*, 276 Va. 689, 668 S.E.2d 141 (2008), a minority holding that required independent corroboration of anonymous tips involving an allegedly drunk driver. Dissenting from the denial, Chief Justice Roberts stated that whether the Fourth Amendment requires such corroboration "is an important question that is not answered by our past decisions, and that has deeply divided federal and state courts." *Virginia v. Harris*, 558 U.S. 978, 979 (2009)(Roberts, C.J., dissenting from denial of certiorari.)

This case provides the Court with the perfect opportunity to answer that important question and ensure that lower courts do not sanction further violations of the Fourth Amendment.

1. This Court Held In *Florida v. J.L.* That The Fourth Amendment Requires Officers to Corroborate Anonymous Tips

Florida v. J.L., 529 U.S. 266 (2000), involved an anonymous tip about a young Black male wearing a plaid shirt and standing at a particular bus stop who was also carrying a gun. The Court found that the tip did not have the "moderate 'indicia of reliability'" required to provide reasonable suspicion for a *Terry* stop under the Fourth Amendment, in part because the lack of "predictive information" meant the officers could not test the informant's knowledge or credibility. 529 U.S. at 268, 271. "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." 529 U.S. at 272.

The Court also rejected the prosecution's request that it adopt a "firearms exception" to its Fourth Amendment analysis. 529 U.S. at 272-274. While recognizing that firearms "are dangerous, and extraordinary dangers sometimes justify unusual precautions," 529 U.S. at 272, the Court held that "an automatic firearm exception to our established reliability analysis would rove too far" because it would be impossible to confine the exception to allegations regarding firearms, and harassers could subject anyone to an intrusive police search simply by making a false, anonymous "bare-boned tip about guns." 529 U.S. at 272-273; see 4 Wayne R. LaFave, *Search and Seizure* § 9.5(i), p. 809-816 (4th ed. 2012.)

The Court did not, however, rule out the possibility that "the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," citing the example of "a report of a person carrying a bomb." 529 U.S. at 273-274.

2. Federal And State Courts Have Undermined The Fourth Amendment's Requirement That Anonymous Tips Be Corroborated

In this case, California's First Appellate District Court of Appeal approved a vehicle stop based on an anonymous tip involving reckless driving even though the officers involved were unable to corroborate any dangerous driving after following the vehicle for approximately five miles. (Appendix A, October 12, 2012 Opinion, at 15-16; see CT 73-75, 83, 89-90, 100-101, 209.) While the opportunity for corroboration distinguished this case from the precedents the lower court primarily relied upon, *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001), and *People v. Wells*, 38 Cal.4th 1078, 45 Cal.Rptr.3d 8, 136 P.3d 810 (2006), the Court of Appeal joined a long line of federal and state court cases involving anonymous tips of drunk or reckless driving that have flouted this Court's holding in *Florida v. J.L.*, 529 U.S. 266 (2000).

While drunk drivers constitute a serious danger to the public, *see Virginia v. Harris*, 558 U.S. 978, 978 (2009)(Roberts, C.J., dissenting from denial of certiorari), the recent tragic events in Newtown,

Connecticut remind us that firearms pose a comparable threat, *see* Colby J. Morrissey, Note, *Anonymous Tips Reporting Drunk Driving: Rejecting a Fourth Amendment Exception for Investigatory Traffic Stops*, 45 New Eng. L. Rev. 167, 190-194 (2010), and that a lone gunman can, like a bomb, potentially kill many more people than a drunken driver. Despite *J.L.'s* unanimous rejection of seizures based on uncorroborated anonymous tips involving firearms, 529 U.S. at 272-273, *Wheat* approved a vehicle stop without corroboration of an anonymous tip of reckless driving, largely due to the bomb-like danger of an "erratic and possibly drunk driver." 278 F.3d at 736-737. The Eighth Circuit found that the danger justified an immediate stop of the vehicle without any corroboration of dangerous driving, but specifically noted that "when the officer does *not* effect an immediate stop of a potentially drunk driver, the force of this justification rapidly diminishes." 278 F.3d at 724-725, 737 n. 13 (emphasis in original).

Relying heavily on *Wheat's* analysis of the dangers posed by drunk drivers, the California Supreme Court in *Wells* also approved an officer's immediate stop of a vehicle without any corroboration of dangerous driving, dismissing the officer's failure to observe such driving as "not significant," in part because "the officer in this case stopped defendant's van immediately after spotting it." *Wells*, 38 Cal.4th at 1088.

In contrast to *Wheat* and *Wells*, the Virginia Supreme Court in *Harris v. Commonwealth*, 276 Va.

689, 668 S.E.2d 141 (2008), followed *J.L.'s* holding that an anonymous tip must provide predictive information about alleged criminal activity. *Harris* held that an anonymous tip about a drunk driver did not constitutionally justify a vehicle stop because the officer was unable to corroborate any drunken or erratic driving, though the officer had the opportunity to observe some unusual driving before making the stop. 276 Va. at 696-698. The tip's specific description of the vehicle, including its location and direction of travel, was not the required predictive information but "information available to any observer, whether a concerned citizen, prankster, or someone with a grudge ...." 276 Va. at 696.

Unfortunately, the Virginia Supreme Court falls within a distinct minority in adhering to the holding in *J.L.*, instead of its *dicta*.[2] By the time the Eighth

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[2] The Wyoming Supreme Court correctly anticipated the *J.L.* holding in *McChesney v. State*, 988 P.2d 1071 (Wyo. 1999), and the Supreme Courts of North Dakota and Kentucky have followed *J.L.*'s holding in *Anderson v. Director, North Dakota Dep't of Transp.*, 2005 ND 97, 696 N.W.2d 918 (N.D. 2005), and *Collins v. Commonwealth*, 142 S.W.3d 113 (Ky. 2004), as has Oklahoma's highest criminal court in *Nilsen v. State*, 2009 OK CR 6, 203 P.3d 189 (2009); *see* James Michael Scears, Comment, *Anonymous Tips Alleging Drunk Driving: Why "One Free Swerve" is One Too Many*, 64 Okla.L.Rev. 759, 784-785 (2012). A handful of lower state court decisions have also adopted the minority view, including *Washington v. State*, 740 N.E.2d 1241 (Ind. App. 2000), *Commonwealth v. Lubiejewski*, 49 Mass.App. 212, 729 N.E.2d 288 (Mass. App. 2000), and *Stewart v. State*, 22 S.W.3d 646 (Tex.App.

Circuit handed down *Wheat* – less than two years after this Court's decision in *J.L* – the Vermont, Iowa and Wisconsin Supreme Courts had already "held that *J.L.* does not prevent an anonymous tip" from constitutionally justifying an immediate vehicle stop "even when the investigating officer is unable to corroborate that the driver is operating the vehicle recklessly and therefore unlawfully." *Wheat*, 278 F.3d at 728, citing *State v. Boyea*, 171 Vt. 401, 765 A.2d 862 (Vt. 2000), *State v. Walshire*, 634 N.W. 2d 625 (Iowa 2001), and *State v. Rutzinski*, 241 Wis.2d 729, 623 N.W.2d 516 (2001). Since *Wheat* was decided in 2001, Tennessee, Delaware and Hawaii have followed suit, in addition to California's decision in *Wells*. See *State v. Hanning*, 296 S.W. 44 (Tenn. 2009), *Bloomingdale v. State*, 842 A.2d 1212 (Del. 2004), and *State v. Prendergast*, 83 P.3d 714 (Haw. 2004). The Eleventh Circuit has even used the *dicta* in *J.L.* to justify the search of a home based on an anonymous report of an emergency situation. *United States v. Holloway*, 290 F.3d 1331, 1338-1339 n (11th Cir. 2002); *see* Melanie D. Wilson, *Since When Is Dicta Enough To Trump Fourth Amendment Rights? The Aftermath of Florida v. J.L.* 31 Ohio N.U.L. Rev. 225-229 (2005).[3]

2000).

[3] Legal scholars continue to address the two lines of authority that have developed since *J.L.* more than a decade after the Court decided the case. *See, e.g.*, Andrew B. Kartchner, Note, *Virginia in the Driver's Seat: How the Supreme Court of Virginia Can Help the Supreme Court of the United States Finally Establish the Drunk-Driving Exception to Anonymous Tips Law*, 25 Regent U. L. Rev.

J.L.'s staunch protection of citizens from the risk of unconstitutional searches based on anonymous, possibly vindictive tips has been undermined by the lower courts' reliance on *J.L.*'s *dicta*, "thus allowing the exception to swallow the rule." *J.L.*, 529 U.S. at 273. This Court should grant certiorari in this case and stop the widespread erosion of this critical area of Fourth Amendment protection. It was undisputed in this case that the officers did not see any erratic driving (CT 73-75, 83, 89-90, 100-101, 209), and without such corroboration the anonymous tip did not provide officers with the reasonable suspicion constitutionally required to stop the vehicle under *J.L.*, 529 U.S. at 270-271.

185, 191-198 (2012); Scears, *supra* at 771-785; Chris La Tronica, Comment, *Could You? Should You? Florida v. J.L.: Danger Dicta, Drunken Bombs, and the Universe of Anonymity*, 85 Tul. L. Rev. 831, 844-857 (2011); Morrissey, *supra* at 182-188; Denise N. Trauth, Comment and Casenote, *Requiring Independent Police Corroboration of Anonymous Tips Reporting Drunk Drivers: How Several State Courts Are Endangering the Safety of Motorists*, 76 U. Cin. L. Rev. 323, 329-338 (2007); Wilson, *supra* at 218-229; and Jon A York, Note, *Search and Seizure: Law Enforcement Officers' Ability to Conduct Investigative Stops Based Upon An Anonymous Tip Alleging Dangerous Driving When the Officers Do Not Personally Observe Any Traffic Violations*, 34 U. Mem. L. Rev. 173, 185-197 (2003).

3. This Court Should Resolve The Controversy Regarding The Varying Reliability of Anonymous Tips

As Justice Kennedy noted in his concurrence in *Florida v. J.L.* (2000) 529 U.S. 266, while a truly anonymous informant has "not placed his credibility at risk and may lie with impunity," even anonymous tips may "have certain features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action." 529 U.S. at 275 (Kennedy, J., concurring). In explaining why lower courts have not followed the holding in *J.L*, the Chief Justice identified not only the dangers posed by drunk driving, but also "the enhanced reliability of tips alleging illegal activity in public, to which the tipster was presumably an eyewitness;..." *Virginia v. Harris*, 558 U.S. 978, 980 (2009)(Roberts, C.J., dissenting from denial of certiorari); *see also United States v. Wheat*, 278 F.3d 722, 734-735 (8th Cir. 2001); and *People v. Wells*, 38 Cal.4th 1078, 1086-1087, 45 Cal.Rptr.3d 8, 136 P.3d 810 (2006). Legal scholars have struggled to explain how the varying reliability of anonymous tips affects Fourth Amendment analysis.[4]

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[4] *See, e.g.*, 4 LaFave, *Search and Seizure*, *supra* § 9.5(i), p. 809-816; Kartchner, *supra* at 187-198; Scears, *supra* at 776-777, 792-804; La Tronica, *supra* at 844-857; Morrissey, *supra* at 194–197; Trauth, *supra* at 340-341; Wilson, *supra* at 218-229; and York, *supra* at 178-180, 185-197.

This case provides the Court with a perfect opportunity to analyze and resolve the controversial issues that arise when officers attempt to use anonymous tips to provide them with reasonable suspicion to seize vehicles, as well as to search homes. *United States v. Holloway*, 290 F.3d 1331 (11th Cir. 2002.) The original tip in this case – that a specific vehicle "[r]an the reporting party off the roadway" (CT 71) – ostensibly demonstrated that the tipster was an eyewitness to illegal activity, but that information was never conveyed to the detaining officer, who was told only to be on the lookout for the "reckless driver" of a specific vehicle. (CT 71-72, 82, 88, 98.) The dispatcher's failure to apprise the officer of the information necessary to evaluate the reliability of the tip is crucial because dispatchers are not trained officers, and the "reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." *J.L.*, 529 U.S. at 271; *see also Anderson v. Director, North Dakota Dep't of Transp.*, 2005 ND 97, 696 N.W.2d 918, 923 (N.D. 2005).

The tip to the dispatcher provided the type of detailed information about the suspect's activities that can enhance reliability and "give rise to reasonable suspicion." *See Wheat*, 278 F.3d at 732, 732 n.8; Morrissey, *supra* at 184-185. But once again, the officer only heard that there was a reckless driver, which is the sort of "bare assertion" that does not support reasonable suspicion. *Anderson*, 696 N.W.2d at 923; *see also Harris v. Commonwealth*, 276 Va. 689, 696, 668 S.E.2d 141 (2008), and Scears, *supra* at 799

(if only bare assertion, "just as likely that the tip is false").

The tip came from a 911 call (CT 56-57, 59, 63), which may provide automatic caller identification that increases the reliability of the tip. *J.L.*, 529 U.S. at 275-276 (Kennedy, J., concurring); Scears, *supra* at 7792-795. But Professor LaFave has argued that caller identification only makes an anonymous tip more reliable if potential informants are aware that they can be identified and criminally charged for providing false information. 4 LaFave, *Search and Seizure, supra* § 9.5(i), p. 816.

Finally, the responding officers could not plausibly investigate whether the driver of the suspect vehicle had run the caller off the roadway, or driven recklessly, because the stop would occur more than twenty minutes after and more than twenty miles away from the incident. (CT 71-72, 76-77, 80, 83, 89-90, 100-101.) The only way to determine any illegality was to observe dangerous driving, *Commonwealth v. Lubiejewski*, 49 Mass.App. 212, 729 N.E.2d 288 (Mass. App. 2000), because unless the driver simply admitted to having driven recklessly, there was nothing that a stop could accomplish in terms of investigation. *See Harris v. Commonwealth*, 276 Va. 689, 696, 668 S.E.2d 141 (2008).

CONCLUSION

While anonymous tips can perform a valuable function in assisting the police to protect the public, unscrupulous accusers can also use them to subject innocent people to intrusive, unconstitutional police seizures. Due to the two separate, conflicting lines of authority that have developed in the wake of this Court's decision in *Florida v. J.L.*, this aspect of Fourth Amendment protection now depends entirely on jurisdiction – officers in some, but not all, parts of the country can stop vehicles based on anonymous tips, even though they cannot corroborate any dangerous driving.

This Court should grant certiorari to ensure that the constitution protects citizens uniformly throughout the country.

Respectfully submitted,

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APPENDIX

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APPENDIX A

Filed 10/12/12

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. LORENZO PRADO NAVARETTE et al., Defendants and Appellants.	A132353 (Mendocino County Super. Ct. Nos. SCUK-CRCR-08-86137-02, SCUK-CRCR-08-86137-03)

Appellants Lorenzo Prado Navarette and Jose Prado Navarette (collectively, Appellants)[1] were detained by officers of the California Highway Patrol (CHP) and subsequently arrested for transportation of marijuana and possession of marijuana for sale (Health & Saf. Code, §§ 11359, 11360). The marijuana was discovered in Appellants' pickup truck during a traffic detention after the officers received a report from an unidentified citizen that the vehicle had been observed driving recklessly. Appellants' motion to suppress the evidence seized from their truck was denied, and they pled guilty to transportation of marijuana (Health & Saf. Code, § 11360).

Citing *People v. Wells* (2006) 38 Cal.4th 1078 (*Wells*), Appellants contend that the evidence against them should have been suppressed because the anonymous tip received by police was insufficient to provide reasonable suspicion of criminal activity justifying an investigative stop of the vehicle, where the officers directly confirmed only significant innocent details of the tip but did not directly observe any illegal activity. We conclude that the totality of the circumstances in this case justified the traffic stop. We also reject an argument that the *Harvey-Madden* rule[2] required the police dispatcher who originally

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1 Because Appellants share the same last name, references to each as an individual is by first name only for purposes of clarity. We intend no disrespect.

2 *People v. Harvey* (1958) 156 Cal.App.2d 516, 522–524 (conc. opn. of Dooling, J., Draper, J.); *People v. Madden* (1970) 2 Cal.3d 1017.

received the call to personally testify at the suppression hearing. Because the detention was supported by reasonable suspicion, Appellants' suppression motion was properly denied and the judgments are affirmed.

I. BACKGROUND

On August 20, 2009, the Mendocino County District Attorney charged Appellants with transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)) and possession of marijuana for sale (Health & Saf. Code, § 11359). At the preliminary hearing, Appellants each made a motion to suppress evidence (Pen. Code, § 1538.5, subd. (f)). The following facts are taken from the preliminary hearing testimony.

On the afternoon of August 23, 2008, Matia Moore and Sharon Odbert were working as a dispatch team at a CHP 911 call center in Mendocino County. Moore was the receiver who took incoming calls, and Odbert was the dispatcher who broadcast messages to CHP officers over the radio. Moore and Odbert communicated with each other via computer, with those communications recorded in what are called CAD logs.

At about 3:47 p.m., Moore received a call over an allied agency line, which is a dedicated phone line for calls from other dispatch offices. The caller identified herself as a Humboldt County CHP dispatcher. Moore generated a CAD log from the information she received

and at the hearing she authenticated a printed record of that log. In the log, she recorded that a silver Ford F150 pickup truck with license plate number 8D94925 had run an unidentified reporting party off the roadway and was last seen five minutes earlier (i.e., five minutes before Moore wrote the log) at mile marker 88 on Highway 1, heading southbound. Moore did not hear the original 911 report to the Humboldt CHP. She also did not know whether the Humboldt dispatcher who spoke to her was the person who took the original 911 call.

Odbert testified that she saw the following information generated on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcasted the information to officers at 3:47 p.m. Two CHP units responded to the broadcast and reported they were en route from Fort Bragg, heading north. At 4:00 p.m., Sergeant Francis reported that he had passed the vehicle near mile marker 69. Officer Thaddeus Williams testified that he spotted the vehicle near mile marker 66 and saw Francis following behind it. Williams let them pass, made a U-turn, and then followed them heading south. At about 4:05 p.m., Francis pulled the vehicle over by MacKerricher State Park and soon thereafter Williams pulled up behind them.

The officers approached the car on the passenger side and asked both occupants (Appellants)

for identification, then returned to Francis's patrol car to run identification checks. The driver, Lorenzo, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. From this location, they smelled marijuana and ordered Appellants to exit the vehicle. A search of the vehicle disclosed four large bags of marijuana in the truck bed, along with fertilizer, hand clippers, and oven bags. Appellants were arrested. An expert testified that in his opinion the marijuana was possessed for sale.

Appellants argued that the evidence did not establish reasonable suspicion of criminal activity justifying the traffic stop. Specifically, they asserted that the tipster's report was too vague to support the stop without further inquiry by the officers, and the officers who pulled over the vehicle did not directly observe any erratic driving that might have established reasonable suspicion of unlawful activity. They also argued that the prosecutor failed to provide sufficient evidence that the reported tip was actually received by the Humboldt County CHP, in violation of the *Harvey-Madden* rule. The prosecutor responded that, under *Wells, supra,* 38 Cal.4th 1078, the information provided in the anonymous tip coupled with the officers' observations confirming significant innocent details of the tip established reasonable suspicion for the stop given the alleged dangerous conduct of the driver. Moreover, the officers' corroboration of much of the detailed information provided in the report sufficiently established the veracity of the tip as required by *Harvey-Madden*.

The magistrate denied the motion to suppress and held Appellants to answer. He found no *Harvey-Madden* violation, commenting, "I think there's a fairly reliable chain from Humboldt County to the officer." He further ruled that reasonable suspicion was established under the standards announced in *Wells, supra,* 38 Cal.4th 1078: the anonymous tipster's report of reckless driving[3] here was comparable to the report of a vehicle weaving all over the road in *Wells*, and the officers confirmed innocent details of the anonymous tip just as the officers did in *Wells*.

Appellants moved to set aside the charges under Penal Code section 995 on the ground that the magistrate erred in denying the motion to suppress per *Wells, supra,* 38 Cal.4th 1078. In a written order, Superior Court Judge Clayton Brennan denied the motion.

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[3] Jose twice draws this court's attention to the fact that the magistrate erroneously stated during argument that there was evidence the driver crossed "a double-yellow line to the extent it forced someone off the road." He correctly notes there was no evidence presented at the preliminary hearing that the vehicle had crossed a double yellow line. As the trial court ruled, the statement was clearly a result of the "magistrate's faulty recollection." We agree with the People that the magistrate's misstatement is immaterial because the record strongly suggests the magistrate did not ultimately make such a finding. Defense counsel promptly corrected the misstatement, and the magistrate did not reiterate it when he made his final ruling.

Appellants petitioned for writ review of the trial court's order, which this court denied for untimeliness, an insufficient showing of entitlement to pretrial review, and an inadequate record. (*Navarette v. Superior Court* (Feb. 11, 2010, A127541) [nonpub. order].) Appellants petitioned for review by the Supreme Court which, after requesting and receiving an answer, denied the petition. (*Navarette v. Superior Court* (Apr. 28, 2010, S180366).)

Appellants subsequently pled guilty to transportation of marijuana and the possession for sale charge was dismissed. The court suspended imposition of sentence and placed Appellants on three years' probation on the condition they serve 90 days in county jail.

II. DISCUSSION

"When, as here, a magistrate rules on a motion to suppress under Penal Code section 1538.5 raised at the preliminary examination, he or she sits as the finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences. In reviewing the magistrate's ruling on a subsequent motion . . . the superior court sits as a reviewing court—it must draw every legitimate inference in favor of the information, and cannot substitute its judgment for that of the magistrate on issues of credibility or weight of the evidence. On review of the superior court ruling by appeal or writ, we in effect disregard the ruling of the superior court and directly review the determination of the magistrate. . . . [Citation.] [¶] . . .

[W]e defer to the magistrate's factual determinations when supported by substantial evidence, but exercise our independent judgment in determining whether, on such facts, the challenged search was reasonable under the Fourth Amendment. [Citation.]" (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1244–1245, fn. omitted.)

We first consider the *Harvey-Madden* issue—whether there was sufficient evidence before the magistrate to establish that an anonymous tip was in fact received by the police department and was not fabricated.

A. *The* Harvey-Madden *Rule*

" 'It is well settled that while it may be perfectly reasonable for officers in the field to make arrests on the basis of information furnished to them by other officers, "when it comes to justifying the total police activity in a court, the People must prove that the source of the information is something other than the imagination of an officer who does not become a witness." [Citations.] To hold otherwise would permit the manufacture of reasonable grounds for arrest within a police department by one officer transmitting information purportedly known by him to another officer who did not know such information, without establishing under oath how the information had in fact been obtained by the former officer. [Citations.]' " (*People v. Madden, supra,* 2 Cal.3d at p. 1021, quoting *People v. Remers* (1970) 2 Cal.3d 659, 666–667 (*Remers*); see also *Whiteley v. Warden* (1971) 401 U.S.

560, 568, disapproved on other grounds by *Arizona v. Evans* (1995) 514 U.S. 1, 13.) "The absence of such a requirement would allow a police officer to manufacture reasonable grounds to arrest while circumventing the necessity of pointing to 'specific and articulable facts' [citation] justifying his suspicions." (*Remers*, at p. 667.) This rule applies to the requirement of reasonable suspicion for investigatory stops. (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1259 (*Richard G.*).)

In informant cases, "[t]he best way of negating 'do it yourself probable cause' is to have the officer who received the information from outside the police department testify, but that is not the only way." (*People v. Orozco* (1981) 114 Cal.App.3d 435, 444 (*Orozco*).) Evidence that corroborates information in the tip may also satisfy the *Harvey-Madden* rule. (*Orozco*, at pp. 444–445.) In *Orozco*, for example, an "anonymous caller supposedly said that people were shooting out of [a] car. The [P]eople never proved that such a call was made but they did prove that there were cartridges within four to five feet of the passenger door of the car when the police looked for them. . . . The presence of the cartridges certainly supports a very strong inference that the police did not make up the information from the informant. Thus, the veracity of the dispatcher's statement that he received a call was circumstantially proved." (*Ibid.*; see also *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1317–1318, 1320 (*Johnson*); *Richard G., supra*, 173 Cal.App.4th at p. 1256; cf. *In re Eskiel S.* (1993) 15

Cal.App.4th 1638, 1644 (*Eskiel S.*).)[4] Jose argues the

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[4] In *Johnson*, the court found sufficient corroboration where an anonymous tipster had reported that two Black males—between 25 and 30 years old; one with a moustache and wearing a red jacket and black pants and the other wearing a black jacket and jeans—were climbing a fence into the backyard of a specific residence, and upon arrival police observed two Black males—in their 20's; each with a moustache and a beard or goatee; one wearing a red and black top with jeans and the other wearing a dark long-sleeved shirt and jean overalls—10 yards from the address. (*Johnson*, *supra*, 189 Cal.App.3d at pp. 1317–1318, 1320.)

In *Richard G.*, a dispatch reported that two males—one wearing a black t-shirt and the other a blue Pendleton-type jacket—were creating a disturbance at a particular address and walking in the direction of a nearby park, and one was possibly armed. (*Richard G.*, *supra*, 173 Cal.App.4th at p. 1256.) Within minutes of receiving the dispatch, two patrol officers observed two men matching the description walking near the park with two women, and ordered the men to stop. (*Ibid.*) The court held the *Harvey-Madden* rule was satisfied based solely on the detaining officers' testimony because there clearly "was no 'manufacture' of information. . . . [T]here is no way that the dispatcher could have manufactured these detailed descriptions at or near the place and time the officers saw appellant and his companion matching the detailed descriptions." (*Id.* at pp. 1256, 1259.)

In *Eskiel S.*, in contrast, the court found insufficient corroboration to satisfy the *Harvey-Madden* rule. (*Eskiel S.*, *supra*, 15 Cal.App.4th at p. 1644.) The only evidence presented was a radio broadcast reporting a possible gang fight involving 10 to 12 Black persons, including one possibly armed with a rifle, in the area of a certain intersection. The defendant and others were detained in a nearby park. (*Id.* at p. 1641.) While recognizing that "[w]here *significant* portions of the

Harvey-Madden rule was violated here because the prosecution did not present the testimony of the Humboldt County dispatcher who actually received the original report. We disagree. The testimony was unnecessary because there was sufficient corroborating evidence to establish that the tip was not manufactured by the police department. First, the Mendocino County dispatchers established—by testifying based on their personal knowledge and by authenticating a business record—that a tip was received from the Humboldt County dispatch office shortly before the dispatch was broadcast and that the tip contained the information received by Williams. Second, several significant facts in the tip were corroborated by Williams's personal observations shortly after receiving the tip: the description, license plate number, location and direction of the vehicle. These corroborated details serve the purpose of the *Harvey-Madden* rule: they provide persuasive evidence that the reported tip was genuine and not a fabrication of a " 'phantom informer' " by a law

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broadcast can be verified, it is reasonable to conclude that the source of the information 'is probably right about other facts . . . including the claim that the object of the tip is engaged in criminal activity,' " the court held that "[b]ecause of the general nature of the information contained in the radio broadcast . . . , no amount of corroboration could have justified a detention based on the broadcast. . . . The individuals allegedly involved in the 'possible' criminal activity were not described other than by race and only a general 'area' was given as their location." (*Id.* at p. 1644, fn. omitted.)

enforcement official.[5] (See *People v. Poehner* (1971) 16 Cal.App.3d 481, 487.)

Jose argues there is a split in the case law between strict (*Eskiel S., supra,* 15 Cal.App.4th 1638) and relaxed (*Orozco, supra,* 114 Cal.App.3d 435, *Richard G., supra,* 173 Cal.App.4th 1252) adherence to the *Harvey-Madden* rule and urge us to follow *Eskiel S.* He further argues that *Eskiel S.* permits reliance on corroboration only where alleged illegal activity is corroborated, not where innocent details are corroborated. We disagree with both arguments. First, we see no real divergence in the case law. It is true that *Richard G.* criticizes *Eskiel S.* for "requir[ing] strict adherence to the '*Harvey-Madden*' rule without addressing the crucial role of independent corroboration," and states, "We think a plausible argument could be made that the crime report at issue in *Eskiel S.* was sufficiently corroborated . . . ." (*Richard G.*, at p. 1260.) However, *Eskiel S.* expressly acknowledges that sufficient corroboration can satisfy the *Harvey-Madden* rule and simply holds that insufficient corroboration was present in that case. (*Eskiel S.*, at p. 1644.) We view *Eskiel S.* as consistent with the approach taken in *Orozco, Richard G.*, and *Johnson, supra,* 189 Cal.App.3d 1315, and see no reason to argue with the court's application of the law to the facts before it. Second, we disagree that

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[5] We also note that, although not offered in evidence at the evidentiary hearing, Jose's counsel acknowledged on the record receipt of a recording of the original citizen call to the CHP dispatcher.

Eskiel S. draws a distinction between corroboration of innocent details versus alleged illegal activity. *Eskiel S.* makes no such distinction. Rather, it refers to "significant" details in the tip, which may include innocent or incriminating details. (*Eskiel S.*, at p. 1644.) Moreover, *Eskiel S.* specifically distinguished *Johnson*, which was decided by the same appellate district, because the corroborating facts there were significant, even though those facts simply included detailed descriptions of the suspects and their location and did not involve criminal activity. (*Eskiel S.*, at p. 1644; *Johnson*, at pp. 1317–1320.)

In *People v. Ramirez* (1997) 59 Cal.App.4th 1548 (*Ramirez*), the court held that probable cause or reasonable suspicion can be established by the collective knowledge of officers involved in an arrest or detention even if not all of that information is conveyed to the specific officer or officers who carry out the arrest or detention. (*Ramirez,* at p. 1555 ["when police officers work together to build 'collective knowledge' of probable cause, the important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers' collective knowledge"]. Neither party disputes that the rule applies to reasonable suspicion as well.

Jose argues *Ramirez, supra,* 59 Cal.App.4th at page 1556, is distinguishable because the arrest in that case was "based on a fellow officer's determination of probable cause, which in turn was based on the officer's direct observation that the vehicle was

speeding." Here, on the other hand, he argues, "the dispatcher is not trained to make reasonable suspicion determinations, and the information was not based on her observations, but was supplied by an anonymous tipster."

The assertion that dispatchers are not trained in determining probable cause suggests an argument that the collective knowledge rule should not apply when an officer relies on a *dispatcher's* express or implied statement of reasonable suspicion. While perhaps an interesting argument, it is not relevant on the facts of this case. Here, the question is not whether the officers properly relied on the dispatcher's *determination* of reasonable suspicion, but whether they properly relied on *information* relayed to them by the dispatchers. As we explain *post*, that information and the officers' corroboration of significant parts of that information justified the stop here in light of the public danger posed by reported reckless driving. The dispatchers were merely the conduits of the relevant information.

We find no *Harvey-Madden* violation.

B. *Reasonable Suspicion for the Traffic Stop*

1. *The* Wells *Legal Standard*

In *Wells*, the Supreme Court reiterated the well-established reasonable suspicion standard for investigative stops by law enforcement officers: "[A]n officer may stop and detain a motorist on reasonable suspicion that the driver has violated the law.

[Citations.] The guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' [Citations.] . . . [¶] Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip. [Citation.] But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity." ' [Citation.]" (*Wells, supra,* 38 Cal.4th at pp. 1082–1083.)

The Court explained that citizen tips by victims or eyewitnesses generally are sufficient alone to supply reasonable suspicion, "especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety. (*Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926 [phoned-in tip of erratic driving]; *People v. Rios* (1983) 140 Cal.App.3d 616 [car illegally parked and traffic hazard]; *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579 [reckless driving, driver pointing gun]." (*Wells, supra,* 38 Cal.4th at p. 1083, parallel citations omitted; see also *People v. Smith* (1976) 17 Cal.3d 845, 850–851 [it is reasonable for police to rely on tips of citizen-informants].) Nevertheless, special concerns arise when such a tip comes from an anonymous source. As explained by the United States Supreme Court, "Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated

[citation], 'an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity,' [citation]." (*Florida v. J.L.* (2000) 529 U.S. 266, 270 (*J.L.*).) To establish reasonable suspicion in an anonymous victim or eyewitness tip case, the tip must exhibit sufficient indicia of reliability, be "suitably corroborated," and be "reliable in its assertion of illegality, not just in its tendency to identify a determinate person." (*Id.* at pp. 270, 272.) However, the court held open the possibility that there may be "circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," such as a report of a person carrying a bomb. (*Id.* at pp. 273–274.)

In *Wells*, the California Supreme Court held that the danger exception postulated in *J.L., supra,* 529 U.S. at pp. 273–274, applies when an anonymous tipster contemporaneously reports drunken or erratic driving on a public roadway and officers are able to corroborate significant innocent details of the tip, such as detailed descriptions of the vehicle and its location. (*Wells, supra,* 38 Cal.4th at pp. 1080–1081, 1087–1088; *People v. Dolly* (2007) 40 Cal.4th 458, 464 (*Dolly*).) In *Wells*, a CHP officer received a dispatch report of a possibly intoxicated driver " 'weaving all over the roadway' " in "a 1980's model blue van traveling north on Highway 99 at Airport Drive." (*Wells*, at p. 1081.) The officer was about three to four miles north of Airport Drive and saw a blue van driving north on the highway about two to three minutes after receiving the dispatch. Without observing any erratic driving or

other illegal activity, the officer pulled the car over for an investigative stop. (*Ibid.*) The Supreme Court held the stop was supported by reasonable suspicion. (*Id.* at p. 1082.) First, circumstantial evidence supported the inference that the tipster was an eyewitness (*id.* at p. 1088), a fact that itself enhanced the reliability of the tip: "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare. [Citations.]" (*Id.* at p. 1087) Second, officers confirmed detailed identifying information in the tip before pulling the vehicle over, thus further enhancing the reliability of the tip. (*Id.* at p. 1088.) Finally, the report of a reckless driver poses a "grave and immediate risk to the public." (*Id.* at p. 1087.)

Wells found an opinion of the Eighth Circuit in *United States v. Wheat* (2001) 278 F.3d 722 (*Wheat*) particularly persuasive (*Wells, supra,* 38 Cal.4th at pp. 1084–1088), so we take guidance from that case as well. The *Wheat* court held that reasonable suspicion was established in the totality of the following circumstances: "An anonymous caller provided an extensive description of a vehicle that, based on his contemporaneous eyewitness observations, he believed was being operated dangerously, and cited specific examples of moving violations. When Officer Samuelson caught up with the vehicle minutes later while it was stopped at an intersection, he corroborated all its innocent details, confirming that it was the one identified by the tipster. Within seconds

after the vehicle resumed motion, Officer Samuelson effected an immediate investigatory stop, rather than allow it to proceed and potentially endanger other vehicles." (*Wheat*, at p. 737.) The tipster had reported that the vehicle was "passing on the wrong side of the road, cutting off other cars, and otherwise being driven as if by a 'complete maniac.' " (*Id.* at p. 724.)

2. *Application of* Wells *in this Case*

Under the *Wells* standard, the officers here had reasonable suspicion to conduct an investigative stop of Appellants' vehicle. The contents of the tip supported an inference that it came from the victim of the reported reckless driving. The officers' prompt corroboration of significant innocent details of the tip—the detailed description of the vehicle including its license plate number and the accurate description of its location and traveling direction—sufficiently established the reliability of the tip to support reasonable suspicion. Finally, the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity.

Appellants argue the tipster here did not provide enough information about the alleged illegal driving to render the tip reliable without corroboration of illegal activity by the officers.[6] They argue a report

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6 In support of this argument, Lorenzo criticizes the *Wells* majority's reasoning and extensively cites the *Wells* dissent as well as the concurring opinion in *Dolly*

that the vehicle ran the reporting party off the roadway was not an unambiguous report of unlawful activity or of an ongoing public danger because the vehicle might have simply swerved to avoid an obstacle in the road. In contrast, they argue, the report in *Wells* of a car " 'weaving all over the roadway' " strongly indicated unlawful activity and an ongoing danger to the public. (See *Wells, supra,* 38 Cal.4th at p. 1087.) They note that both *Wells* and *Wheat* emphasized the importance of receiving detailed information about the alleged dangerous driving and warned that a stop might not be justified on limited or vague information about the suspect vehicle's alleged erratic driving. (See *Wells,* at p. 1088; *Wheat, supra,* 278 F.3d at p. 731–732 & fn. 8.) Lorenzo specifically argues there was no evidence that the informant characterized the driving as "reckless"; instead, the record only shows that the Humboldt County dispatcher told Moore the driving was "reckless," a characterization that might have been nothing more

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(authored by the *Wells* dissenters, expanding on views expressed in *Wells*). He also argues that the *Wells* majority erred by stating that harassment was unlikely in the context of phone-in tips of erratic driving by vehicles that can quickly be located and stopped. The *Wells* dissent and *Dolly* concurrence are irrelevant to our analysis of the issues, as is Lorenzo's criticism of the *Wells* majority's reasoning, because we are bound to follow the majority opinions in the *Wells* and *Dolly* cases, which clearly hold that confirmation of innocent details alone is sufficient to establish reasonable cause. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *Wells, supra,* 38 Cal.4th at pp. 1086, 1088; *Dolly, supra,* 40 Cal.4th at p. 465.)

than the Humboldt dispatcher's personal speculation.

In our view, it is immaterial whether the caller or the Humboldt dispatcher characterized the driving as "reckless" because the phrase "ran the reporting party off the roadway" itself strongly implies reckless if not deliberately aggressive driving. While it is *possible* the driver's actions were misinterpreted by the caller, or by the dispatcher, this possibility does not undermine the lawfulness of the stop. Officers only need reasonable suspicion to detain people for investigative purposes, not proof of illegal activity or even probable cause to believe they engaged in or were about to engage in criminal activity. " 'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.' " (*People v. Souza* (1995) 9 Cal.4th 224, 233.)

Jose argues that the officers lacked reasonable suspicion because the dispatcher's radio broadcast about the tip may have referred only to "reckless driving" rather than a report that the vehicle "ran the reporting party off the roadway." As we read the record, the magistrate found that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway.[7] Because this finding was

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[7] In posthearing argument, Jose's counsel told the magistrate, "The issue is whether the information to communicated [*sic*] the officer was enough for him to detain the car." Immediately thereafter, the magistrate said, "[I]n *Wells* the only conduct that was reported to the officer was that the car was weaving. [¶] . . . [S]o what the

supported by substantial evidence in the record,[8] we

officer had there was testimony that there was some kind of erratic driving that could be consistent with drunk driving. [¶] And I think this is conduct similar to that where someone forced another person off the road . . . ." This statement implies that the magistrate found the officers were told that the vehicle reportedly ran another vehicle off the road. Supporting this conclusion is the fact that Jose's counsel had previously conceded in argument that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway. For example, he said, "I don't think the officer testified . . . [he heard about] crossing the double-yellow line . . . . [¶] The information conveyed to them was 'ran this person off the road,' " and, "Based on my own memory . . . about what the detaining officer testified he heard[was] . . . the Ford pickup . . . almost or did run the reporting party off the road. [¶] I don't think we're disputing that."

[8] Odbert testified that she saw the following information on her screen: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." She broadcast "that information" to officers in the field at 3:47 p.m. When she was further questioned about that broadcast, she testified, "I would say, Attention, coastal units. BOL for . . . a reckless driver, 23103. And then [I would] give the information, the silver, the F150 pickup, etc." She was then specifically asked whether she broadcast the license plate number and location and traveling direction of the vehicle and she confirmed that she had. She was not specifically asked whether she broadcast the information that the vehicle ran the reporting party off the road.

Moore testified that the dispatcher reads from the computer screen when she makes her broadcast, although she does not necessarily read exactly what is written there. She further testified that the dispatchers are

must accept it as true. We thus need not decide

required to ask callers who report reckless driving what specific conduct is involved and they are required to convey that information to the officers: "The highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They have to have a reason for what they believe is reckless."

When Williams was asked what he heard on the dispatch, he testified, "I remember hearing dispatch of a reckless driver southbound on Highway 1. I don't recall the exact location. . . . [¶] . . . [¶] . . . The description was a silver pickup truck with a specific license plate number." He was not specifically asked whether he was paraphrasing or whether he specifically recalled hearing the words "reckless driving" without further description.

On this record, the magistrate could find that the dispatch to the officers stated that the caller reported the vehicle ran the reporting party off the road. " '[W]e must uphold the magistrate's express or implied findings if they are supported by substantial evidence. [Citations.]' [Citation.]" (*People v. Magee* (2011) 194 Cal.App.4th 178, 183.)

Jose acknowledges on appeal that Odbert's testimony "implied that she provided additional information" to the officers beyond the report of "reckless driving" and the vehicle description and location. However, he notes that the "audio tapes of the actual dispatch [broadcast] were no longer available at the time of the Preliminary Hearing [citations], despite defense counsel's repeated requests. [Citations]." In the trial court, Appellants based their motion to dismiss in part on this alleged discovery violation. The trial court denied the motion because the officers' "subjective belief" in the existence of reasonable suspicion was immaterial. Appellants do not renew their discovery argument on appeal. Therefore, the alleged discovery violation plays no role in our analysis of whether substantial evidence supports the magistrate's implied finding.

whether a report of "reckless driving" alone would have been too vague to support reasonable suspicion for the traffic stop.

Finally, Appellants place great emphasis on the fact that the officers here did not pull the car over immediately, but only after they had followed it for five minutes without observing any erratic driving. They imply that this period of observation belied any genuine apprehension of public danger in the officers, which was necessary to justify the stop without corroboration of the driver's illegal activity. Jose argues alternatively that, even if the officers initially perceived a public danger, the extended period of observation without incident *dispelled* that concern and *negated* any reasonable suspicion they might have initially had. Appellants note that *Wheat* emphasized that the public danger of a possibly drunk driver justified quick police action without direct corroboration of illegal activity. The court commented that a stop might not be justified if officers follow the vehicle for a substantial period of time without observing illegal activity. (*Wheat, supra,* 278 F.3d at pp. 736–737 & fn. 13.) Along the same lines, *Wells* twice notes that the officers' stop of the vehicle was immediate, thus explaining why direct corroboration of illegal activity was not possible. (*Wells, supra,* 38 Cal.4th at pp. 1081, 1088.)

In the circumstances presented here, we cannot agree the officers' brief observation of the vehicle without incident belied or dispelled any reasonable concern about public safety. The five-minute delay in

pulling over Appellants' vehicle resulted from the fact that both Francis and Williams were driving north on Highway 1 when they first observed Appellants' vehicle traveling south and thus needed to make U-turns and catch up to the vehicle before they could pull it over. The reported illegal driving—running another car off the roadway—was a serious traffic violation that carried an unusually high risk of collision and injury. Further, the vehicle was traveling on Highway 1, which (as the magistrate noted) was an undivided two-lane road, thus raising the risk of a collision with oncoming traffic, which poses a particular risk to human life and limb. Finally, the anonymous tip itself had several indicia of reliability—the content of the tip strongly suggested it came from the victim and the tipster accurately described the appearance, location and direction of the vehicle. In these circumstances, the officers could reasonably conclude there was a risk to public safety that necessitated a prompt investigative stop despite their brief observation of the vehicle without incident.[9]

---

[9] In a footnote, *Wheat* cites three cases that purportedly illustrate that "when the officer does not effect an immediate stop of a potentially drunk driver, the force of this justification [i.e., the need to stop a suspected drunk driver quickly] rapidly diminishes." (See *Wheat, supra*, 278 F.3d at p. 737, fn. 13.) In each of the three cited cases, however, the courts held—inconsistent with *Wells, supra*, 38 Cal.4th 1078—that an anonymous citizen's tip about erratic or drunk driving does not establish reasonable suspicion for an investigatory stop even if its innocent details are confirmed. The officers' failure to directly observe erratic driving in those cases, therefore, left the officers without any reasonable suspicion to pull

In sum, the People established that the officers had reasonable suspicion of unlawful activity justifying their investigative stop of Appellants' vehicle. The court properly denied Appellants' motion to suppress the fruits of that stop.

III. DISPOSITION

The judgments are affirmed.

BRUINIERS, J.

We Concur:

JONES, P. J.
SIMONS, J.

---

over the drivers. In other words, the period of observation without incident did not *dispel* reasonable suspicion raised by the anonymous tip; it failed to provide reasonable suspicion in the first place. (See *McChesney v. State* (Wyo. 1999) 988 P.2d 1071, 1076–1077; *State v. Boyle* (La.Ct.App. 2001) 793 So.2d 1281, 1283–1285; *Washington v. State* (Ind.Ct.App. 2000) 740 N.E.2d 1241, 1246.)

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

FILED: Dec. 9,2009

PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.: SCUK-CRCR-08-86137
Plaintiff, vs.	)	RULING ON PENAL CODE SECTION 995 MOTION AND NON-STATUTORY MOTION TO DISMISS
LORENZO NAVARETTE and JOSE NAVARETTE,	)	
Defendants.	)	

I. Procedural Background:

The court heard argument in this matter on November 16, 2009 and it was taken under submission. Both defendants had joined in the motion. Defendants argue that no evidence of sufficient reasonable suspicion to detain their vehicle was introduced at the preliminary hearing, and that their motion to suppress should have been granted. In addition, defendants argue that the destruction of evidence that the defendants had repeatedly requested prevented them from effectively cross-examining the

witnesses the preliminary hearing and motion to suppress.

If a Penal Code Section 1538.5 motion is heard and denied at the preliminary examination, and if the holding order concerning one or more counts could not stand without the challenged evidence, review of the motion is available through Penal Code Section 995. A 995 motion is a review of the magistrate's action and is based solely on the transcript of the preliminary examination; no new evidence may be heard or considered. *People v. Sahagun* (1979) 89 Cal.App.3d 1, 20. Moreover, the judge ruling on the 995 motion is bound to defer to the preliminary examination ruling and uphold it if the record supports it. *People v. Alonzo* (1993) 13 Cal.App.4t11 535.

II. Factual Background:

Defendants contend that an anonymous tip about their erratic driving did not provide the officers with reasonable suspicion to pull them over. The evidence was undisputed that the detaining officers dtd not personally observe any erratic driving. Rather, a complaint about defendants' driving was made via a 911 call. This information was then relayed to the arresting officers who intercepted the defendants about 18 miles and 13 minutes from where they were located at the time the 911 call was first received (TX:38 and 34-35).

Owing to the vicissitudes of cell phone reception in remote areas, the 911 call was first received by

Humboldt County CHP and ultimately relayed to Mendocino County CHP dispatch for transmission to the officers in the field. The information regarding the complaint was that the defendants' "vehicle ran RP (reporting party) off the roadway." (TX 13:22-25) Specific identifying information regarding the defendants' car was also supplied by the reporting party and relayed through dispatch; namely, the location, model, make and color of defendants' vehicle as well as the exact license plate number.(TX 29:11-15)

The Dispatcher who first received the information from Humboldt County (Matia Moore) testified at the preliminary hearing. She testified that Humboldt County Dispatch advised they had taken a 911 call about a reckless driver heading toward Mendocino County. (TX 15:15-20) She further testified that the "highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They [CHP] have to have a reason for what they believe is reckless." (TX 15) She also stated that when she receives a call directly from a reporting party, she is required to ask why the reporting party believes the offending driver is reckless or possibly intoxicated. Although she could not positively state that making such inquiry was official CHP policy, she stated she was trained at the academy to "get a reason for why we are broadcasting that someone is being reported as a reckless driver.11 (TX 16:1-4) Although the Humboldt County Dispatcher who actually took the call did not testify, it appears in this case that the stated reason for asserting that the

car was driving in a reckless manner is the reporting party's explanation that the defendants ran him/her off the road.

CHP Officer Williams also testified at the preliminary examination. He testified that remembered "hearing dispatch of a reckless driver southbound on Highway 1." (TX 46:13-14) He also recalled being provided a description of a silver pickup truck with a specific license plate number. (TX 46:21-22) A short time later he encountered the vehicle southbound on Highway 1, made a U-turn to follow the vehicle, and initiated a traffic stop at the entrance to MacKerricher State Park. (TX 47:5-48:9) Neither Officer Williams nor any other witness testified as having personally observed any erratic driving or violations of the vehicle code, The defendants' vehicle was pulled over solely on account of the anonymous tip.

III. Denial of 1538.3 Motion:

The magistrate denied defendants' 1538.5 motion, relying on the 3 part test set forth in the California Supreme Court case *People v. Wells* (2006) 38 Cal.41 1078. The *Wells* Court held that tips of drunken or erratic driving may indeed provide reasonable suspicion justifying a traffic stop if the following factors are present:

1) The tipster must furnish sufficient identifying information regarding the vehicle and its location, so the officer and

reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller;

2) The tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity. And,

3) At least the "innocent details" of the tip must be corroborated by the officers.

It is clear on the record of this case that the first and third prongs of the *Wells* test are satisfied. The defendants' truck was precisely described with an accurate license plate number and intercepted as expected given the initial information about its location and direction of travel.

The question of whether the second prong has been satisfied is complicated somewhat by the magistrate's statement that the defendants' vehicle crossed the double-yellow line and forced the reporting party off the road. The magistrate's statement regarding the double yellow line violation is clearly an invention of faulty recollection. Nowhere in the record does there appear any evidence that the defendants' vehicle crossed the double yellow line. Nor is there any evidence that the defendants' vehicle was ever reported to have crossed the double yellow line. However, even if one ignores the invented fact of the

double yellow line violation, the record is still sufficient for a finding that the officers had reasonable suspicion to justify the traffic stop.

As the *Wells* court emphasized, "reasonable suspicion" is a lesser standard than probable cause, and can arise from less reliable information than required by probable cause, including an anonymous tip. (Ibid, p.1083). But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are "reasonably "consistent with criminal "activity."' The question becomes, then, is a citizen's tip of an erratic driver who "ran me off the road" sufficient to raise a reasonable suspicion that would justify an investigatory stop and detention? This court believes it does.

As the *Wells* court notes, "The California cases indicate that a citizen's tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety,"(Ibid, at p. 1083) For example, the *Wells* court relied on *Lowry v. Gutierrez* 129 Cal.App.4th 926 which involved "an anonymous cell phone tip that a specific vehicle was being driven the wrong way on a city street and had turned into oncoming traffic. Although the detaining officer himself observed no erratic driving, the Court of Appeal agreed that on immediate investigatory stop was appropriate under these exigent circumstances. The court, citing California Highway Patrol statistics, noted the grave

public safety hazard posed by drunken drivers The court also stressed the unlikelihood of a false report, and the tipster's detailed description of the car, its location, and the nature of the erratic driving, making it likely the caller was an eyewitness."

Defendants contend that the tipster's mere assertion that they "ran me off the road" is too vague an assertion of illegal conduct. Defendants argue that the *Wells* court in relying on *United States v. Wheat* (8th Cir. 2001) 278 F.3d 722 requires "the tip must contain a sufficient quantity of information to support an inference that the tipster has witnessed an actual traffic violation that compels an immediate stop." Because there are ostensibly innocent ways a driver might run another driver off the road, or alternatively, circumstances that may lead a person to call 911 complaining they were run off the when there was in fact no unlawful conduct, defendants argue that the tipster must identify particular vehicle code violations (e.g. crossing the double yellow line, unsafe lane change, running a stop sign, etc) to meet the sufficient quantity of information compelling an immediate stop. The court disagrees with this argument. Where, as here, an anonymous tipster claims to have been run off the road, they are an eyewitness to the erratic driving. The reliability of the tip is enhanced by the fact that the report involved a precise vehicle traveling in a remote area that was then located a short time later where expected. Moreover, although a precise vehicle code violation was not identified, the conduct at issue, running someone off the road, is the exact kind of harm that elevates the exigency of erratic/intoxicated

driving tips above tips involving only possessory offenses. As the court"notes, "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned- in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." supra, at 1087, citing *Lowry v. Gutierrez*, supra, 129 Cal.App.4 111 at p. 941).

Accordingly, on the facts in the record of this case, It is immaterial that the tipster did not identify a particular vehicle code violation. A report of being run off the road is sufficient to raise reasonable suspicion justifying an investigatory stop. The magistrate's faulty recollection that defendants' vehicle crossing the double yellow line is of no significance. The record, even excising the invented double yellow line violation, is still sufficient to establish reasonable suspicion. Therefore, the defendant's P.C. Section 1538.5 motion was properly denied.

IV. Non-Statutory Motion To Dismiss Based on Deprivation of Constitutional Right to Confront and Cross-Examine:

Defendant's argue that the destruction of the dispatch audio recordings of what the detaining officers were told by their dispatchers denied them the right to effectively cross-examine the officer's

regarding their subjective knowledge in deciding to detain defendants. However, as the prosecution correctly point out, "the reasonable suspicion necessary to justify a detention is measured solely by"an objective standard." (*People v. Lloyd* (1992) Cal.App.4th 724, 733). The officer's subjective belief is immaterial. Accordingly, defendants have suffered no prejudice on the salient issue before the court and the non-statutory motion to dismiss is denied.

V. Conclusion:

For the reasons set forth above, defendants' 995 motion and non-statutory motion to dismiss are denied.

SO ORDERED.

DATED: 12-8-09

/s/ Clayton Brennan
JUDGE OF THE SUPERIOR COURT

Copies to the parties,
Katherine Houston, Esq. Mendocino County District Attorney's Office
Jeffrey D. Schwartz, Esq.
Brian J. Petersen, Esq.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

FILED: Jan. 22, 2010

PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.: SCUK-CRCR-08-86137
Plaintiff,	)	
vs.	)	
LORENZO NAVARETTE and JOSE NAVARETTE,	)	RULING ON MOTION TO RECONSIDER
Defendants.	)	

The record amply demonstrated that a 911 call was received by CHP Dispatch from a driver who claimed that be had been run off the road by defendants' vehicle. This "tip" contained further innocent details which precisely identified defendants' car as the vehicle in question. In addition, the officer testified that he had received information Via dispatch of "a reckless driver southbound on Highway 1". The officer's testimony did not specifically note anything about a driver being run off the road. However, this omission is immaterial.

The three prong test articulated in *People v. Wells* 38 Cal.4th 1078, 1086 requires:

1) The tipster must furnish sufficient Identifying information regarding the vehicle and its location, so the officer arid reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller;

2) The tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity; and,

3) At least the "innocent details" of the tip must be corroborated.

The first and third prongs are obviously met. The second prong is also met given the testimony of the CHP dispatch operators concerning the tip about the erratic driving. The record demonstrates that the information imparted to CHP dispatch was that defendants' vehicle ran the tipster off the road. This information constitutes a sufficient showing of erratic driving justifying the stop.

The *Wells* case does not appear to require that Information regarding the precise nature of the erratic driving be Imparted to the investigating officer. The second prong of the test simply focuses on the Information in the tip to law enforcement. In this case, the tip received by the CHP dispatchers was that the defendants ran the tipster off the road. The court finds

that description sufficiently indicative of a traffic violation to compel an immediate stop. Moreover, this court is convinced that the *Wells* court was more concerned about the information in the tip than the Information Imparted to the officer by dispatch because the officer in the Wells case never observed any bad driving of Wells vehicle.

Finally, even If the Wells case were read to require that the investigating officer himself must be informed of the tipster's description of the offending vehicle's driving, the record Indicates the officer understood that the defendant's vehicle was reported to be driving recklessly. Reckless driving can manifest In many ways, but it is clearly a violation of Vehicle Code Section 23103, and clearly a basis to be concerned about a possible DUI driver. Accordingly, the stop is this case was justified and defendant's motion to reconsider is denied.

SO ORDERED.

DATED: 1/15/10

/s/ Clayton Brennan
JUDGE OF THE SUPERIOR COURT

Copies to the parties,
Katherine Houston, Esq. Mendocino County District Attorney's Office
Jeffrey D. Schwartz, Esq.
Brian J. Petersen, Esq.

APPENDIX C

FILED: Jan. 3, 2013

Court of Appeal
First Appellate District
Division Five
No. A132353

S206841

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

LORENZO PRADO NAVARETTE et al., Defendants and Appellants.

The petitions for review are denied

/s/ Cantil-Sakauye
Chief Justice

APPENDIX D

FILED: Oct. 30, 2012

COURT OF APPEAL
FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
LORENZO NAVARETTE et al.,
Defendants and Appellants.

A132353
Mendocino County No. SCUKCRCR0886137,
CR088613703

BY THE COURT:

The petition for rehearing from appellant Jose Navarette, filed herein on October 17, 2012 is denied.

Date: Oct. 30, 2012

/s/ Jones,
Presiding Justice

APPENDIX E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO CLERK'S DOCKET & MINUTES

Clerk: [illegible]
Court Reporter: [illegible]
Judge: Hon. RICHARD HENDERSON
Bailiff: _____

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JOSE PRADO NAVARRETE,
Defendant.

☒ Present ☐ In Custody ☐ Remanded
☐ Not Present ☐ Cash/Bond Posted/Forf.

APPEARANCES:
D.A. Houston
P.G. _____
ATTY/PD/APD Schwartz
INTERPRETER [illegible]
Language: _____ [ ] Sworn [ ] Cert/Reg
CASE# MC-UK-CR-CR-08-0086137-003
HEARING TYPE: PRELIMINARY HEARING

DATE: 08/14/2009

TIME: 1:30 P.M.
COURTROOM: A
CHARGES:

1	HS	11359	
	F POSSESS/MARIJF/SALE		08/23/2008
2	HS	11360(A)	
	F TRANSPORT/SELL/MARJ		08/23/2008
3	PC	1465.8	
	SECURITY ASSESSMENT		08/28/2008

[handwritten] 1538.5 denied

PRELIMINARY EXAMINATION HELD
MATTER CONTINUED TO 9-4-09 130 A

☐ ☒ Preliminary examination was held on the above date and it appearing to the above judge that a felony violation of 112 has been committed and that there is sufficient cause to believe the above named defendant GUILTY thereof, it is ordered he be held to answer the same.

WITNESS SWORN AND TESTIFIED

1. _____
2. _____
3. _____
4. _____
5. See Attached Witness List

EXHIBITS	marked	admitted
No. 1 _____	☐	☐
No. 2 _____	☐	☐
No. 3 _____	☐	☐
No. 4 _____	☐	☐
No. 5 See Attached Exhibit List	☐	☐

☐ ☐ 1538.5 Motion ☐ Granted ☐ Denied

☐ ☐ Misdemeanor charges will accompany the felony to Superior Court for arraignment on the same date.

☐ ☐ 17(b)PC reduction as to counts _____ by motion of _____, granted.

PRELIMINARY EXAMINATION WAIVED

☐ ☐ The above named defendant, being charged in a complaint on file in this Court under the above case number, and having waived preliminary examination on the charges, the Court and the District Attorney consenting thereto, it is ordered that he be held to answer on the same.

PLEA OF GUILTY

☐ ☐ The above named defendant, being charged in a complaint on file in this Court under the above case number, and having entered a please of ☐ GUILTY ☐ NOLO CONTENDRE to a felony conviction of _____, it is ordered that this case is certified to the Superior Court for sentencing. Court finds that a factual basis for the plea exists.

☐ ☐ Defendant advised of, understands and knowingly, and voluntarily waives all the

following rights:

- ☐ the right to jury or court trial,
- ☐ the right to confrontation and cross-examination of the witnesses against him, the right present evidence to show not guilty of offense,
- ☐ the privilege against self-incrimination.

CUSTODIAL STATUS

- ☐ ☐ Defendant is committed to custody of Sheriff until his is legally discharged.
- ☐ ☐ Admitted to bail in amount of $_____ and is committed to the Sheriff of this county until he gives such bail.
- ☐ ☐ Defendant is released on his own recognizance.
- ☐ ☐ Defendant to remain free on bail.
- ☐ ☐ Order for Warrant Rescinded.

FURTHER PROCEEDINGS

- ☐ ☐ Count(s) _____ dismissed by judge, Count(s) _____ dismissed at request of District Attorney.
- ☐ ☐ Defendant ordered to report immediately to Probation Department
- ☐ ☐ Defendant certified to Superior Court under 1388PC
- ☐ ☐ Defendant ordered to appear in Superior Court Department ___ in Ukiah/Ten Mile on ___ at 8:30 AM ARR/J&S
- ☐ ☐ Bench Warrant ordered issued with bail set in the amount of $____

/s/
Judge of the Superior Court

I certify the foregoing is a true copy of the judgment rendered on the above date by the above named judge.

Certified copy delivered to Sheriff on _____,
Clerk

OPPOSITION BRIEF

RECORD
AND
BRIEFS

No. 12-9490

In the Supreme Court of the United States

LORENZO PRADO NAVARETTE, JOSE PRADO NAVARETTE, *Petitioners*,

v.

CALIFORNIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

OPPOSITION TO PETTITION FOR WRIT OF CERTIORARI

KAMALA D. HARRIS
Attorney General of California
SUSAN DUNCAN LEE
Acting Solicitor General
GERALD A. ENGLER
Senior Assistant Attorney General
SETH K. SCHALIT
Supervising Deputy Attorney General
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Counsel for Respondent

QUESTION PRESENTED

Does a 911 call from an unidentified citizen informant reporting that a specified vehicle ran the caller off the road provide reasonable suspicion to stop the vehicle when that fact, along with numerous confirmable innocent details, is relayed to the officers by trained dispatchers, and the officers confirm the innocent details?

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STATEMENT

1. Matia Moore and Sharon Odbert worked as a dispatch team in the California Highway Patrol (CHP) 911 call center in Mendocino County. Clerk's Transcript (C.T.) 51-52, 70.[1]

On August 23, 2008, at 3:47 p.m., Ms. Moore received a call on an internal "allied" CHP dispatch phone line from a CHP 911 dispatcher in Humboldt County. C.T. 54-55, 64. The Humboldt 911 dispatcher explained that she had received a 911 call from an unidentified citizen who reported being run off the road by a reckless driver. According to the Humboldt dispatcher, the 911 caller described the perpetrator's vehicle as a silver Ford F150 pickup truck, with license plate number 8D94925. C.T. 55-59. The incident happened on Highway 1 near mile marker 88, and the truck was traveling south. C.T. 55, 71-72.

As Ms. Moore received the call, she typed the information into her computer, which simultaneously displayed the information on her partner's computer and recorded it in a dispatch log. The entry stated: "Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-949925. Ran the reporting party off the roadway and was last seen approximately five ago." C.T. 55, 71-72.

Ms. Odbert promptly broadcast to coastal CHP units to be on the lookout for a California Vehicle

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[1] Citations to the clerk's transcript are to the transcripts prepared in connection with Lorenzo Navarette's appeal, which are generally more complete than those prepared for Jose Navarette's appeal.

Code section 23103 reckless driver, who ran the reporting party off the roadway. The broadcast included the truck's description, license plate number, location, and direction of travel. C.T. 70-72; App. 20-23.[2]

Two CHP units responded to the broadcast and reported they were en route from the nearby city of Fort Bragg, heading north. C.T. 72-73, 88. At 4:00 p.m., Sergeant Francis reported that he had passed the truck near mile marker 69. C.T. 73, 76. Officer Williams, who had been trailing Sergeant Francis, spotted the truck near mile marker 66 and saw Sergeant Francis following it. Officer Williams let them pass, made a U-turn, and then followed them. C.T. 88-90. At about 4:05 p.m., Sergeant Francis pulled the vehicle over and, soon thereafter, Officer Williams pulled up behind them. C.T. 83, 90.

The officers approached the car on the passenger side and asked the occupants (petitioners) for identification, then returned to Sergeant Francis's patrol car to run identification checks. The driver, Lorenzo Navarette, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. C.T. 91, 102, 108, 111. From this location, they noticed the distinct odor of marijuana emanating from the truck and ordered petitioners to exit the vehicle. C.T. 92-94, 112. A search of the truck disclosed four large bags containing over thirty pounds of marijuana in the enclosed truck bed, along

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[2] Ms. Moore explained that CHP dispatchers are trained in evaluating calls and determining whether the reported conduct constitutes reckless driving under California Vehicle Code section 23103. C.T. 57.

with fertilizer, pruning shears, and oven bags for packaging. C.T. 94, 105, 136, 139-40. An expert opined that the marijuana was possessed for sale. C.T. 136, 139-40.

2. On August 20, 2009, the Mendocino County District Attorney filed an information charging petitioners with transportation of marijuana and possession of marijuana for sale. Cal. Health & Safety Code §§ 11359, 11360(a); C.T. 40-41.

At the preliminary hearing, petitioners moved to suppress evidence seized following the stop and search of the truck, contending the stop was unlawful. Cal. Penal Code § 1538.5(f). The magistrate denied the motion. The superior court heard and denied petitioners' motion to set aside the information based on a challenge to the denial of his suppression motion. App. 26-37.

Petitioners filed a petition for writ of mandate challenging the superior court's order, which the appellate court denied on procedural grounds. The California Supreme Court denied review. App. 7.

On December 13, 2010, petitioners pleaded guilty to transportation of marijuana, Cal. Health & Safety Code § 11360(a), and were placed on probation. C.T. 334, 362, 372-77, 381-86; App. 6.

3. On appeal, petitioners renewed their challenge to the denial of the suppression motion. See Cal. Penal Code § 1538.5(m). On October 12, 2012, the First District Court of Appeal rejected their claim and affirmed the judgment. App. 1-25. The court subsequently denied a petition for rehearing. App. 39.

On January 3, 2013, the California Supreme Court denied review. App. 38.

REASONS FOR DENYING CERTIORARI

Petitioners contend certiorari is warranted to decide whether the Fourth Amendment requires suppression of evidence obtained when law enforcement receives an anonymous, detailed 911 call that a driver is driving drunk or recklessly, and officers confirm only the innocent details of the call. Because California, consistent with a majority of jurisdictions, has correctly interpreted this Court's holding in *Florida* v. *J.L.*, 529 U.S. 266 (2000), as permitting a detention under such circumstances, review by this Court is not warranted.

1. An officer may detain a motorist on reasonable suspicion that the driver has violated the law. *Ornelas* v. *United States*, 517 U.S. 690, 693 (1996). The guiding principle in determining the propriety of an investigatory detention is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). "Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the 'totality of the circumstances—the whole picture,' . . . that must be taken into account when evaluating whether there is reasonable suspicion." *Alabama* v. *White*, 496 U.S. 325, 330 (1990) (citation omitted). Reasonable suspicion to undertake a brief investigative detention "is a less demanding standard than probable cause not only in the sense that [it] can be established with information that is different in quantity of content than that required to establish probable cause, but also in the sense that reasonable

suspicion can arise from information that is less reliable than that required to show probable cause.'" *Id.*

In *J.L.*, this Court held that an anonymous tip that an individual was in possession of a firearm did not justify a stop and frisk absent some independent corroboration of the reliability of the tipster's assertion of illegal conduct. *J.L.*, 529 U.S. at 272-74. The anonymous tipster reported that an individual wearing a plaid shirt at a bus stop was carrying a concealed firearm, but did not explain the basis for his knowledge. The officers confirmed the innocent details of the tip, but did not corroborate any details showing illegal behavior before detaining the individual. *Id.* at 268. *J.L.* held "the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about" the suspect lacked even the "moderate indicia of reliability present in *White*," and did not provide reasonable suspicion justifying a *Terry* stop. *Id.* at 271. *J.L.* rejected the state's argument that firearms were sufficiently dangerous in and of themselves to justify dispensing with the requirement of reliability shown through corroboration of illegality. *Id.* at 272-73

The Court was careful, however, to limit *J.L.*'s holding to the specific nature of the reported conduct at issue, namely an anonymous report of a nonthreatening possessory offense. "The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person

carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk." *Id.* at 273-74. It held only "that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *White* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm." *Id.* at 274.

2. Following *J.L.*, many jurisdictions, including California, have drawn a distinction between cases involving nonthreatening possessory offenses and those offenses posing an immediate grave risk to public safety, such as drunk driving, with respect to the degree of corroboration required to justify a detention. For the latter class of offenses, the need for corroboration of illegal conduct identified by the anonymous tipster is offset by the inherent danger of the conduct itself and the overall reliability of the tip.

In *People* v. *Wells*, 38 Cal. 4th 1078, 1081, 136 P.3d 810 (2006), the California Supreme Court held that an anonymous phone tip reporting a possibly intoxicated driver in a vehicle "weaving all over the roadway" and accurately describing the vehicle and its location was sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, were able to corroborate only the innocent details of the tip. *Wells* found support in *United States* v. *Wheat*, 278 F.3d 722 (8th Cir. 2001), as well as numerous cases from other jurisdictions, which reached a similar conclusion. *Wells*, 38 Cal. 4th at 1084-85.

Wells noted that anonymous reports of erratic or drunk driving may provide reasonable suspicion

justifying a traffic stop if three key factors are present. "First, the tipster must furnish sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller." *Id.* at 1086. "Second, the tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity." *Id.* "[T]hird, at least the 'innocent details' of the tip must be corroborated by the officers." *Id.*

Wells agreed with *Wheat* that, "in the context of reckless and possibly intoxicated driving, the tip's lack of 'predictive information' was not critical to determining its reliability. Such an analysis is more appropriate in cases involving tips of concealed criminal behavior such as possession offenses." *Id.* at 1086 (citation omitted); see also *Wheat*, 278 F.3d at 730.

> "[I]n contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that."

Wells, 38 Cal. 4th at 1086 (quoting *State* v. *Boyea*, 765 A.2d 862, 867 (Vt. 2000)); accord, *Virginia* v. *Harris*, 558 U.S. 978, 130 S. Ct. 10, 11 (2009) (Roberts, C.J., dissenting from the denial of certiorari).

Wells pointed to several factors supporting its conclusion. It observed that "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." *Wells*, 38 Cal. 4th at 1087. Second, "the level of intrusion of personal privacy and inconvenience involved in a brief vehicle stop is considerably less than the 'embarrassing police search' on a public street condemned by *J.L.*" *Id.* Third, vehicles are subject to pervasive regulation, and thus, drivers have a reduced expectation of privacy while driving on public highways. *Id.* Also, "traffic stops are 'less invasive, both physically and psychologically, than the frisk' at issue in *J.L.*" *Id.* (quoting *Wheat*, 278 F.3d at 737). Fourth, a relatively precise and accurate description of the vehicle type, color, location, and direction of travel, when promptly confirmed by an investigating officer, enhances the reliability of a tip. *Id.* at 1088. *Wells* added that "[t]he investigating officer's inability to detect any erratic driving on defendant's part is not significant. Motorists who see a patrol car may be able to exercise increased caution." *Id.*

As petitioners acknowledge, California's interpretation of *J.L.* in the context of anonymous reports of drunk or reckless driving is in line with the majority of jurisdictions that have considered this

issue.[3] By contrast, the highest courts of only five states (and lower courts in only few more) have disagreed with California's approach.[4] As *Wells* observed, "although the law appears somewhat unsettled, the better rule, firmly supported by many cases as well as by considerations of public safety and

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[3] See *Wheat*, 278 F.3d at 726-37; *Bloomingdale* v. *State*, 842 A.2d 1212, 1217-22 (Del. 2004); *State* v. *Prendergast*, 83 P.3d 714, 721-24 (Haw. 2004); *State* v. *Walshire*, 634 N.W.2d 625, 626-30 (Iowa 2001); *State* v. *Crawford*, 67 P.3d 115, 119-20 (Kan. 2003); *State* v. *Vaughan*, 974 A.2d 930, 934 (Me. 2009); *State* v. *Sousa*, 855 A.2d 1284, 1288 (N.H. 2004); *State* v. *Golotta*, 837 A.2d 359, 366-73 (N.J. 2003); *State* v. *Scholl*, 684 N.W.2d 83, 89 (S.D. 2004); *State* v. *Hanning*, 296 S.W.3d 44, 49-53 (Tenn. 2009); *State* v. *Boyea*, 765 A.2d at 866-68; *State* v. *Rutzinski*, 623 N.W.2d 516, 523-28 (Wis. 2001); see also *Cottrell* v. *State*, 971 So. 2d 735, 745-46 (Ala. Crim. App. 2006); *State* v. *Torelli*, 931 A.2d 337, 343-45 (Conn. App. Ct. 2007); *People* v. *Shafer*, 868 N.E.2d 359, 362-67 (Ill. App. Ct. 2007); *State* v. *Barras*, 20 So. 3d 1100, 1104-05 (La. Ct. App. 2009); *State* v. *Contreras*, 79 P.3d 1111, 1117-18 (N.M. Ct. App. 2003); *People* v. *Jeffery*, 769 N.Y.S.2d 675 (N.Y. App. Div. 2003); cf. *United States* v. *Whitaker*, 546 F.3d 902, 908-11 (7th Cir. 2008) (noting reduced corroboration requirement for stop based on anonymous 911 call reporting an "ongoing emergency," and listing cases).

[4] See *Washington* v. *State*, 740 N.E.2d 1241, 1246 (Ind. Ct. App. 2000); *State* v. *Grayson*, 336 S.W.3d 138, 143-46 (Mo. 2011); *State* v. *Lee*, 938 P.2d 637, 639-40 (Mont. 1997); *State* v. *Miller*, 510 N.W.2d 638, 644-45 (N.D. 1994); *Nilsen* v. *State*, 203 P.3d 189, 192 (Okla. Crim. App. 2009); *Hall* v. *State*, 74 S.W.3d 521, 525-27 (Tex. App. 2002); *Harris* v. *Commonwealth*, 668 S.E.2d 141 (Va. 2009); *McChesney* v. *State*, 988 P.2d 1071, 1076-78 (Wyo. 1999); see also *Commonwealth* v. *Lubiejewski*, 729 N.E.2d 288, 290-92 (Mass. App. Ct. 2000); but see *Commonwealth* v. *Davis*, 823 N.E.2d 411, 412-14 (Mass. App. Ct. 2005) (finding anonymous tip of drunk driving created sufficient emergency to warrant officer immediately stopping driver without corroboration).

common sense, is that a limited traffic stop is permitted under such circumstances to confirm the officer's reasonable suspicion of intoxicated driving before a serious traffic accident can occur." 38 Cal. 4th at 1081.

3. In this case, the court of appeal applied *Wells*, finding that the tip provided by the unidentified driver sufficiently reliable to support a detention. The content of the 911 call—recounting that petitioners ran the caller off the road—supported the inference that the report was based on personal observation of reckless driving. App. 18. The tip also provided substantial innocent details, including the color, make, and model of petitioners' truck, the license plate number, and the truck's location and direction of travel. The officers' corroboration of these innocent details demonstrated the reliability of the unidentified citizen informant's tip as establishing reasonable suspicion. "Finally, the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity." App 18. As the court observed, "the vehicle was traveling on Highway 1, which (as the magistrate noted) was an undivided two-lane road, thus raising the risk of a collision with oncoming traffic, which poses a particular risk to human life and limb." App. 24. These factors were sufficient to support the court's determination that the officers had reasonable suspicion of unlawful activity justifying the investigative traffic stop.

4. Petitioners separately contend that this case presents a good vehicle for resolving questions "regarding the varying reliability of anonymous tips."

Pet. at 14, citing *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring). However, this assertion is predicated on an incorrect factual premise.

Petitioners acknowledge that the content of the 911 call—recounting that petitioners ran the caller off the road—"ostensibly demonstrated that the tipster was an eyewitness to illegal activity," but they assert "that information was never conveyed to the detaining officer, who was told only to be on the lookout for the 'reckless driver' of a specific vehicle." Pet. at 15. Petitioners' contend that the police receipt of a broadcast reporting "reckless driving" is insufficient without further elaboration to establish reasonable suspicion, notwithstanding that the initial call provided greater detail.

Petitioners factual claim—that the details of the 911 call were not relayed to the officers—was expressly rejected by the court of appeal.

> As we read the record, the magistrate found that the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway. Because this finding was supported by substantial evidence in the record, we must accept it as true. We thus need not decide whether a report of "reckless driving" alone would have been too vague to support reasonable suspicion for the traffic stop.

App. 20-22 (footnotes omitted); see also *id.* at 21 n.8 (pointing to Ms. Odbert's testimony that she received the information on her computer from Ms. Moore, which included that the truck "[r]an the reporting party off the roadway," and "[s]he broadcast 'that information'").

Even if the 911 dispatchers did not relay the particular detail that the truck ran the caller off the road, that information known to the dispatchers is still properly deemed part of the collective knowledge of the officers. See *United States* v. *Whitaker*, 546 F.3d 902, 909 n.12 (7th Cir. 2008) (collective knowledge includes 911 dispatcher); *United States* v. *Fernandez-Castillo*, 324 F.3d 1114 (9th Cir. 2003) (explaining highway patrol "dispatcher's knowledge is properly considered as part of our analysis of reasonable suspicion"); *United States* v. *Kaplansky*, 42 F.3d 320, (6th Cir. 1994) (en banc) (observing "the court must look beyond the specific facts known to the officers on the scene to the facts known to the dispatcher"); *State* v. *Wollam*, 783 N.W.2d 612, 622-25 (Neb. 2010) (dispatcher part of collective knowledge, discussing cases); see generally *United States* v. *Hensley*, 469 U.S. 221, 231-32 (1985) (discussing collective knowledge doctrine); but cf. *United States* v. *Colon*, 250 F.3d 130, 138 (2d Cir. 2001) (civilian 911 operators not part of collective knowledge unless they have "training to assess the information in terms of reasonable suspicion").

Petitioners counter that "dispatchers are not trained officers, and the 'reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.'" Pet. at 15, quoting *J.L.*, 529 U.S. at 271. Although the dispatchers here were not police officers, they had received training on eliciting and evaluating incoming information. C.T. 57; see *Colon*, 250 F.3d at 138.[5] Accordingly, information given to CHP

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[5] See generally Cal. Penal Code § 13510(c) (authorizing California Commission on Peace Officer Standards and Training (continued...)

dispatchers is properly deemed part of the collective knowledge of the responding officers.

Petitioners acknowledge that 911 calls "may provide automatic caller identification that increases the reliability of the tip." Pet. at 16; see *J.L.*, 529 U.S. at p. 276 (noting "[i]nstant caller identification is widely available to police"); *People* v. *Lindsey*, 148 Cal. App. 4th 1390, 1397-98 (2007) ("The act of calling 911 and having a recorded telephone conversation involve a risk that the police could trace the call, as happened here when dispatch received an address and telephone number associated with the two 911 calls it received."). In this case, the 911 call was recorded. App. 12 n.5.

Petitioners question the significance of caller identification if tipsters are unaware that they can be identified. Pet. at 16. California, however, makes it a citable offense to "use[] the 911 telephone system for any reason other than because of an emergency." Cal. Penal Code § 653y. Thus, Californians are on notice of the potential consequences of misuse of the 911 system for harassment. See *J.L.*, 529 U.S. at 276.

Petitioners also suggest in the text of their second question presented that the officers followed petitioners for several miles without observing reckless driving. Pet. at i. However, this suggestion is misleading. The officers did not begin their pursuit from behind petitioners truck and did not

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(...continued)
(POST) to set training standards for dispatchers); POST, Training Specifications For The Public Safety Dispatchers' Basic Course (rev. July 2011) http://lib.post.ca.gov/Publications/DispatcherTrainingSpecsOnlineformat.pdf.

have a long period of observation. Rather, the officers drove north on Highway 1 to intercept petitioners, who were heading south. Sergeant Francis spotted the truck at 4:00 p.m. and pulled it over at 4:05 p.m. "The five-minute delay . . . resulted from the fact that both Francis and Williams were driving north on Highway 1 when they first observed [petitioners'] vehicle traveling south and thus needed to make U-turns and catch up to the vehicle before they could pull it over." App. 23-24. Given the circumstances, the appellate court reasonably found the officers had only a "brief observation" of the truck before making the stop. App. 24.

Finally, petitioners conclude that the officers could not plausibly investigate whether petitioners had run the reporting party off the road because the detention occurred over 20 minutes later and 20 miles from the first reported incident. Thus, they assert, "there was nothing that a stop could accomplish in terms of investigation." Pet. at 16. This claim misses the mark. The need for investigation stemmed from the reasonable possibility that petitioners, who failed to stop after running one driver off the road, were continuing to drive recklessly while possibly intoxicated. The threat to public safety posed by a possibly intoxicated driver on an undivided two-lane coastal highway amply justified further investigation and initiating a traffic stop.

In sum, the totality of circumstances support the lower court's conclusion that the officers had reasonable suspicion based on the 911 call by an unidentified citizen reporting petitioners' had run another car off the road. Plenary review is not warranted in this case.

CONCLUSION

Accordingly, the petition for certiorari should be denied.

Dated: August 9, 2013

Respectfully submitted

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REPLY BRIEF

RECORD
AND
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Supreme Court, U.S.
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No. 12-9490

In The Supreme Court of The United States

LORENZO NAVARETTE,
JOSE P. NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FIVE

PETITIONERS' REPLY BRIEF

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OPPOSITION IDENTIFIES ADDITIONAL REASON TO GRANT THIS PETITION

The Opposition To Petition For Writ Of Certiorari ("Opposition") raises only one new point, documenting the conflict among the federal courts of appeal as to whether the "collective knowledge doctrine," which this Court applied in *United States v. Hensley*, 469 U.S. 221, 229-236 (1985), extends to information known by civilian dispatchers but not conveyed to the detaining officers. Opposition at 10-13.

Hensley involved the detention of a person by one police department based on a bulletin issued by another police department that stated the person was wanted for investigation of a felony. *Hensley*, 469 U.S. at 229. After discussing the need for detaining officers to be able to rely on information known to officers in another jurisdiction, this Court held:

> Assuming the police make a *Terry* stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who *issued* the flyer or bulletin possessed a reasonable suspicion justifying the stop,...

Hensley, 469 U.S. at 233, citing *Terry v. Ohio*, 392 U.S. 1 (1968)(emphasis in original).

The Second Circuit has held that, while *Hensley*

affirmed officers can rely on reasonable suspicion or probable cause determinations made by other officers, "[i]mputing information known only to the civilian operator and not conveyed to the dispatching and then arresting officers would extend the doctrine beyond its current jurisprudential parameters and vitiate the privacy safeguards of the Fourth Amendment ...." *United States v. Colon*, 250 F.3d 130, 137 (2d Cir. 2001.) The Tenth Circuit has refused to extend the common knowledge doctrine to information that was not communicated from one officer to another, noting that *Hensley* and other cases applying the doctrine "all have involved actual communication to the arresting officer of either facts or a conclusion constituting probable cause or an arrest order." *United States v. Shareef*, 100 F.3d 1491, 1503-1505 (10th Cir. 1996).

As the Opposition at 12 demonstrates, the Sixth, Seventh and Ninth Circuits conflict with the Second and Tenth Circuits on this issue, upholding detentions or arrests even though the information required to make a proper determination as to reasonable suspicion or probable cause was known only to civilian dispatchers, not to the officers on the scene or to any

other police officer.[1]

Contrary to the argument in the Opposition at 10-11, this case provides a perfect opportunity for the Court to determine which group of federal courts of appeal has correctly interpreted *Hensley*. Although the original tip in this case stated that a specific vehicle "[r]an the reporting party off the roadway" (Clerk's Transcript on Appeal ("CT") CT 71), both the dispatcher and the detaining officer testified that the officer was only told to be on the lookout for a "reckless driver" in a particular vehicle. (CT 64, 71-72, 76, 82, 87-88, 98.) The Opposition correctly notes that the First Appellate District found there was substantial evidence to support an implied finding that the "dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway," Opposition at 11, citing Appendix at A-20, but the appellate court's conclusion is simply contrary to the testimony of the dispatcher and the officer.

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[1] *United States* v. *Kaplansky*, 42 F.3d 320, 326-327 (6th Cir. 1994)(officers could rely on dispatcher's conclusionary statement that person was "suspicious"); *United States* v. *Whitaker*, 546 F.3d 902, 903-905, 908-911, 909 n.12 (7th Cir. 2008)(rejecting analysis in *Colon* where dispatcher did not convey complete information to officer); *United States* v. *Fernandez-Castillo*, 324 F.3d 1114, 1117-1121, 1117 n.3 (9th Cir. 2003)(dispatcher "distilled and paraphrased" information about erratic driver, and detention was justified because detaining officers was also able to corroborate erratic driving).

CONCLUSION

Other than its discussion of the common knowledge doctrine, the Opposition raises no new points. The Attorney General of California argues at length that, in deciding this case below, the First Appellate District properly followed *Florida v. J.L.*, 529 U.S. 266 (2000) and other precedents, Opposition at 4-10, but does not dispute that this petition raises an important question of federal constitutional law that has sharply divided the courts of last resort in more than fifteen states. Opposition at 8-10 and 9 nn. 3-4. The Opposition raises no jurisdictional defects and, with the exception of the issue addressed in this Reply Brief, cites no factual disputes.

This Court should grant certiorari and resolve the critical Fourth Amendment issue of whether anonymous tips about drunk or reckless drivers can provide the reasonable suspicion necessary for a constitutional vehicle stop when – like the officers in *J.L.* – the detaining officers can only confirm the innocent details provided by the tipster.

Respectfully submitted,

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JOINT APPENDIX

RECORD AND BRIEFS

No. 12-9490

Supreme Court, U.S.
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LORENZO PRADO NAVARETTE
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THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 29, 2013
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APPENDIX A — RELEVANT DOCKET ENTRIES

MENDOCINO COUNTY SUPERIOR COURT
CASE # SCUKCRCR 08-86137

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondent,

vs.

JOSE PRADO NAVARRETE,

Defendant/Appellant.

August 26, 2008	3	COMPLAINT
June 26, 2009	26	NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE SEIZED WITHOUT A WARRANT
July 1, 2009	32	PEOPLE'S RESPONSE TO MOTION TO SUPPRESS EVIDENCE
July 2, 2009	37	CLERK'S MINUTES: PRELIMINARY HEARING/MOTION TO SUPPRESS

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August 14, 2009	39	CLERK'S MINUTES: DENIAL OF MOTION TO SUPPRESS
August 20, 2009	40	INFORMATION, APPENDIX B, PAGE 15a
August 28, 2009	43	REPORTER'S TRANSCRIPT OF JULY 2, 2009 PRELIMINARY HEARING
September 4, 2009	165	REPORTER'S TRANSCRIPT OF AUGUST 14, 2009 CONTINUED PRELIMINARY HEARING
November 3, 2009	179	MOTION TO DISMISS INFORMATION
November 4, 2009	198	PEOPLE'S RESPONSE TO MOTION TO DISMISS
November 12, 2009	202	REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INFORMATION

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December 9, 2009	209	RULING ON PENAL CODE SECTION 995 MOTION AND NON-STATUTORY MOTION TO DISMISS, APPENDIX B TO PETITION, A-26
December 17, 2009	216	NOTICE OF MOTION AND MOTION TO RECONSIDER THE COURT'S DECISION TO DENY DEFENDANTS' PENAL CODE SECTION 995 MOTION; MEMORANDUM OF POINTS AND AUTHORITIES
January 8, 2010	236	BRIEF AFTER HEARING ON DEFENSE MOTION TO RECONSIDER RULING ON PENAL CODE §995 MOTION

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January 22, 2010	240	RULING ON MOTION TO RECONSIDER, APPENDIX B TO PETITION, A-35
December 13, 2010	268	CLERK'S MINUTES: GUILTY PLEA
June 10, 2011	303	CLERK'S MINUTES: SENTENCING
June 16, 2011	304	ORDER OF PROBATION
June 24, 2011	310	NOTICE OF APPEAL

MENDOCINO COUNTY SUPERIOR COURT
CASE #SCUKCRCR 08-86137

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff/Respondent,

vs.

LORENZO PRADO NAVARRETE,

Defendant/Appellant.

August 26, 2008	3	COMPLAINT

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July 1, 2009	21	PEOPLE'S RESPONSE TO MOTION TO SUPPRESS EVIDENCE
July 2, 2009	26	CLERK'S MINUTES: PRELIMINARY HEARING MOTION TO SUPPRESS
July 8, 2009	27	PEOPLE'S FURTHER RESPONSE TO MOTION TO SUPPRESS EVIDENCE
July 13, 2009	30	SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES RE PC 1538.5 MOTION
August 14, 2009	39	CLERK'S MINUTES: DENIAL OF MOTION TO SUPPRESS
August 20, 2009	40	INFORMATION
August 28, 2009	43	REPORTER'S TRANSCRIPT OF JULY 2, 2009 PRELIMINARY HEARING

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September 4, 2009	165	CONTINUED PRELIMINARY HEARING AUGUST 14, 2009
November 4, 2009	179	PEOPLE'S RESPONSE TO MOTION TO DISMISS
November 13, 2009	183	SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PENAL CODE SECTION 995 MOTION
December 8, 2009	207	RULING ON PENAL CODE SECTION 995 MOTION AND NON-STATUTORY MOTION TO DISMISS

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December 17, 2009	213	NOTICE OF MOTION AND MOTION TO RECONSIDER THE COURT'S DECISION TO DENY DEFENDANTS' PENAL CODE SECTION 995 MOTION; MEMORANDUM OF POINTS AND AUTHORITIES
January 22, 2010	234	RULING ON MOTION TO RECONSIDER
December 13, 2010	334	CLERK'S MINUTES: GUILTY PLEA
June 10, 2011	362	CLERK'S MINUTES: SENTENCING
June 15, 2011	378	NOTICE OF APPEAL
June 16, 2011	381	ORDER OF PROBATION

Appendix A

1ST APPELLATE DISTRICT
NAVARETTE ET AL. V. THE SUPERIOR COURT OF MENDOCINO COUNTY
DIVISION 5
CASE NUMBER A127541

02/08/2010 **Notes**
Joint Petition for Writ of Mandate

* * *

02/11/2010 Order denying petition filed.

Notes
BY THE COURT:* The petition for writ of mandate is denied. The petition herein, which concedes that petitioners are subject to the time limits of Penal Code section 999a (see Petn., p. 4, para. VII), was not timely filed within the statutory time limits. Petitioners cite no authority for the proposition that the superior court may properly extend the time limits of section 999a, and the statute itself does not confer such authority. (Cf. Code Civ. Proc .. § 437c, subd. (m)(1) ["& a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. & The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days."].)

Additionally, petitioners have not met their burden of affirmatively demonstrating an entitlement to pretrial review under Penal Code section 1510. Finally, the record is inadequate; counsel's declaration regarding the absent November 16, 2009 reporter's transcript fails to comply with California Rules of Court, rule 8.486(b)(3)(B). *Before Jones, P.J. and Needham, J.

* * * *

CALIFORNIA SUPREME COURT
NAVARETTE V. S.C. (PEOPLE)
CASE NUMBER S180366

02/19/2010 Petition for review filed

Notes
Petitioner: Lorenzo Navarette
Attorney: Jeffrey Dean Schwartz

Petitioner: Jose Navarette
Attorney: Brian John Petersen

03/11/2010 Answer to petition for review filed

Notes
Real Party in Interest: The People
Attorney: Masha A. Dabiza

03/19/2010	Reply to answer to petition filed
	Notes Petitioner: Lorenzo Navarette Attorney: Jeffrey Dean Schwartz Petitioner: Jose Navarette Attorney: Brian John Petersen
04/28/2010	Petition for review denied

* * * *

1ST APPELLATE DISTRICT
THE PEOPLE V. NAVARETTE ET AL.
DIVISION 5
CASE NUMBER A132353

06/20/2011	Notice of appeal lodged/received (criminal)
07/15/2011	Record on appeal filed.
08/29/2011	Counsel appointment order filed.
	Notes Donald Lipmanson/Independent/40 days for Lorenzo Navarette
08/31/2011	Counsel appointment order filed.
	Notes Paul Kleven/Independent/40 days for Jose Navarette

Appendix A

11/17/2011	Appellant's opening brief. **Notes** Defendant and Appellant: Lorenzo Navarette Attorney: Donald Lawrence Lipmanson Filed per CRC 8.25(b)(3)
12/05/2011	Appellant's opening brief. **Notes** Defendant and Appellant: Jose Prado Navarette Attorney: Paul Richard Kleven
04/16/2012	Respondent's brief **Notes** Plaintiff and Respondent: The People Attorney: Jeffrey Laurence
05/07/2012	Appellant's reply brief **Notes** Defendant and Appellant: Jose Prado Navarette Attorney: Paul Richard Kleven

05/08/2012 Appellant's reply brief

Notes
Defendant and Appellant: Lorenzo Navarette
Attorney: Donald Lawrence Lipmanson
Filed per AR 8.25(b)(3)

10/12/2012 Opinion filed, Appendix A to Petition, A-1

Notes
(Signed Unpublished) The judgments are affirmed.

10/17/2012 Rehearing petition filed.

Notes
from attorney Paul Kleven for appellant Jose Navarette

10/30/2012 Order denying rehearing petition filed, Appendix D to Petition, A-39

CALIFORNIA SUPREME COURT
PEOPLE V. NAVARETTE
CASE NUMBER S206841

11/26/2012 Petition for review filed

Notes
Defendant and Appellant: Lorenzo Prado Navarette
Attorney: Donald Lawrence Lipmanson
CRC 8.25(b)

Appendix A

11/26/2012	2nd petition for review filed
	Notes Defendant and Appellant: Jose Prado Navarette Attorney: Paul Richard Kleven (CRC rule 8.25(b))

* * *

01/03/2013	Petitions for review denied, Appendix C to Peition, A-38

* * * *

APPENDIX B — INFORMATION FILED IN SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO, FILED AUGUST 20, 2009

File No: F-08-86137-01 ME
MEREDITH J. LINTOTT
District Attorney
Mendocino County
Courthouse, Room 9
PO Box 1000, Ukiah, CA 95482
(707) 463-4211

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MENDOCINO

SCUK-CRCR-08-86137-02
SCUK-CRCR-08-86137-03

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

LORENZO PRADO NAVARRETE,
JOSE PRADO NAVARRETE,

Defendants.

INFORMATION

Appendix B

THE HONORABLE MEREDITH J. LINTOTT, OF THE COUNTY OF MENDOCINO, HEREBY ACCUSES THE FOLLOWING DEFENDANT OF THE FOLLOWING CRIME(S):

COUNT ONE

Said Defendants

LORENZO PRADO NAVARRETE and **JOSE PRADO NAVARRETE** did on or about the 23rd day of August 2008, commit the crime of **TRANSPORTATION OF MARIJUANA, a FELONY** violation of Section 11360(a) of the California Health & Safety Code, in that said defendants did then and there transport, import into the State of California, sell, furnish, administer, or give away, or offer to transport, import into the State of California, sell, furnish, administer, or give away, or attempt to import into the State of California or transport **MARIJUANA**;

COUNT TWO

Said Defendants

LORENZO PRADO NAVARRETE and **JOSE PRADO NAVARRETE** did on or about the 23rd day of August 2008, commit the crime of **POSSESSION OF MARIJUANA FOR SALE, a FELONY** violation of Section 11359 of the California Health & Safety Code, in that said defendants did then and there have in his/her possession for purpose of sale, **MARIJUANA**;

Appendix B

The offenses charged in the Two Counts of this information were of the same class of crime and connected together in their commission.

Executed on August 18, 2009, at Ukiah, California.

MEREDITH J. LINTOTT
DISTRICT ATTORNEY

/s/_____
Katherine J. Houston
Deputy District Attorney

Defendant to appear in
Superior Court, Department A
on September 4, 2009

APPENDIX C — EXCERPTS OF PRELIMINARY HEARING TRANSCRIPT OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO, DATED JULY 2, 2009 AND AUGUST 14, 2009 (LOCATED IN CLERK'S TRANSCRIPTS AT PAGES 43-175)

[1] SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

HON. RICHARD HENDERSON, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

LORENZO NAVARETTE and JOSE NAVARETTE,

Defendants.

NO. MCUKCRCR 08-86137

For the People:

Meredith Lintott
District Attorney
100 North State Street
Ukiah, CA 95482
BY: KATHERINE HOUSTON, ESQ.
Deputy District Attorney

For Defendant Lorenzo Navarette:

JEFFREY SCHWARTZ, ESQ.
791 Eight Street, Suite H
Arcate, CA 95521

For Defendant Lorenzo Navarette:

BRIAN PETERSEN, ESQ.
360 Ritch Street
San Francisco, CA 94107

Appendix C

* * *

[7] MS. HOUSTON: And, your Honor, I am in possession and counsel's in possession of the actual citizen who called in to dispatch. We have that recording. We know it exists and it plays at least on my computer.

MR. PETERSEN: It plays on mine too. And that absolutely was provided to us.

THE COURT: That is the 911 call?

MS. HOUSTON: That's the 911 call itself.

MS. HOUSTON: Okay. And that call has the woman's name and then there is the CAD log that was produced and discovered to counsel. The written computerized -- actual computerized printout that's created by CHP dispatch in Mendocino County upon receipt of the call. And I have both dispatchers.

What the Court and counsel perhaps need to understand is this call from the citizen, although it occurred in Mendocino County, was routed to Humboldt CHP dispatch. I didn't know that until this morning. Because it doesn't -- there's nothing on here that indicates that. So the dispatcher who took this call is in Humboldt County. When the dispatcher realized that it dealt with a -- a traffic situation in Mendocino County, she transferred it to Mendocino County CHP dispatch. So what I have here this morning is the dispatcher who received the call from the Humboldt dispatcher with the information, the specific information.

And then I also have her partner because they work as a team and they will describe that. I have her partner [8] who was on duty who received that information and broadcast it out, who can explain the CAD log. Both of -- each of them can explain the CAD log and explain what they broadcast out over the air. And then I have the officer who heard the broadcast who made the car stop.

So we have all of the pieces except the Humboldt dispatcher herself because I thought it was a Mendocino County -- I was told originally it was a Mendocino County dispatcher, because it was a Mendocino County driving incident that was reported. And as it turns out, I -- but what we do have is the original call so we know that it exists. The second -- one of the dispatchers this morning, I asked her to call again over to her office to see if by any chance in their archives was the actual recording of what she dispatched out over the air. And it's no longer in existence. It's too old. So we have tried and what we have now is all that exists.

THE COURT: Okay. With that we will attempt to start. If you will call your first witness.

MATIA MOORE,

after being first duly
sworn, testified as follows:

* * *

Appendix C

[9] DIRECT EXAMINATION

BY MS. HOUSTON:

Q Ms. Moore, how are you employed?

A The California Highway Patrol as a dispatcher.

Q How long have you held that position?

A Approximately two and a half years.

Q Were you working as a dispatcher in the -- on the afternoon of August 23rd, 2008?

A Yes, I was.

Q And how many people normally work a shift at the CHP dispatch office that you work out of?

A Two people during the day and evening shifts.

Q Okay. And your office is located where?

A On South Orchard next to DMV.

Q In Ukiah?

A In Ukiah.

Q What area does your dispatch center cover generally?

A Most of Mendocino County and all of Lake County.

Q Now, what -- how is -- how are the -- how was the work allocated between you and the other person who works there during a shift?

[10] A During an eight-hour shift we take four hours of radio and four hours of phone alternating.

Q Can you explain what the four hours of phone means?

A There's a phone desk and a radio desk, so for four hours one person answers the phones and the other person works the radio and at the four-hour mark we switch.

Q And the phone calls come from where?

A Generally majority of our phone calls are 911s from cellular phones.

Q And the radio is radioed out to where?

A To the officers, broadcast.

Q So basically one of you is receiving, one is dispatching?

A Pretty much, yep.

Q Now, how do you -- the two of you communicate with each other?

Appendix C

A Generally we make computer logs. They are called CAD logs. We send those to the radio desk from the service desk, that means the phone desk, send them a log generated from either a phone call or from a 911 call or another agency.

Q And are those messages displayed on a computer screen?

A Yes.

Q Okay. So even if the other person's busy doing something, they can still see it?

A Yeah. It's called "popping up in their queue," [11] the screen pops up that they have something waiting to be broadcast.

Q Likewise, if you are on the phone from a call, you -- you are still capable of entering things into the computer?

A Yes.

Q To pop up at the person's desk?

A Yeah. Any updates that are important I can give them a different -- I guess you would use, like, "status." I can either make them pop up in the queue or send it to her if she just updates. It is kind of hard to explain unless you know the computer system. But basically, I can give her two different levels of alerting her to an update to something.

Q And you can provide then more information as you receive it?

A Yes.

Q Now, do you ever get phone calls from another CHP dispatcher that are dispatching in other geographical areas?

A All the time.

Q And what would be the situation when that would happen?

A If there's a reckless vehicle reported or a possible drunk driver reported and it's coming into our area, the surrounding areas are covered in Sonoma County, Colusa County and northern Mendocino County by other dispatch centers, so all our surrounding areas are [12] different dispatcher centers we talk to.

Q How -- how do they go about notifying you if, let's say, a dunk driver is coming into your area?

A Yes, ma'am. They will generally call us. We have allied agency lines to get through quicker than a public line.

Q So they call you on, like, an inside line?

A Yes.

Q And it's telephone?

A Um-hum.

Q So you answer a telephone call?

A Correct.

Q And then how do you know it's a -- how do you know who is calling you?

A They will identified themselves, they will say this is Golden Gate CHP, Humboldt CHP, Chico. They will let us know is calling.

Q And then what do they tell you?

A They will say they have some information about a reckless driver, a -- a drunk -- possible drunk driver or officer safety information. And then we create a CAD log from that information that they give us.

Q So if you were on the telephone desk, you would get that information from the other dispatcher and then you would enter it into the computer?

A Yes. Create a CAD log for it.

Q Would it then be available to the person on the radio desk to broadcast out?

[13] A Yes.

Appendix C

Q Now, let me -- what I would like to do is show you what's previously been marked People's Exhibit 5 for identification and ask if you recognize what this document is?

A This is the CAD log that I generated.

Q And can you roughly tell us how it gets -- how it gets created? How can you tell this is the one, for example, in this case?

A For this case I see it is the correct date and time. The information being given from Humboldt County shows -- the second line that I entered says, "Original RP," or reporting party, "was to Humboldt County communications."

Q And so then what line did you actually enter?

A I entered Lines 1 and 4 shown. The vehicle description and I created the log that has to have a location, a type code and an area beat.

Q All right. Let's go back to the first line then.

What all is included in that first entry you made once you received the phone call.

A The first entry made is silver a Ford F150 pickup with license plate. Line 2 shows that the vehicle ran the RP off the roadway, was last seen about five minutes ago where the location being southbound on Highway 1.

Q Is there a license plate number?

A Yes.

Q What number is that?

[14] A 8–David–94925.

Q Now, where did that information come from that you entered into the CAD log?

A Humboldt County dispatch.

Q And do you know that how?

A She identified herself as being from Humboldt dispatch and she had called on an allied line.

Q And then after you entered this first line, then what happened?

A Once I create the log with information, it does show up in the queue of the radio desk person they have a pending call that needs to be broadcast.

Q And then did you receive any further information on this call?

A Just the first four lines that I created is what was given to the radio desk person. That was all the information at that point I had obtained from Humboldt County.

Q Okay. And did you -- did everything you received from Humboldt County get entered into the CAD log?

A Yes.

Q And did all of that information then get communicated to the person who was on the radio desk?

A There was an enough room on -- its called our command line on the computer. It's two lines. There's enough room for me to put the type code, the location, the beat and the original information with the vehicle description including the plate, what the offense was to [15] qualify for broadcasting 23103 reckless driver.

Q So what -- what -- when you say "to qualify," do calls have to qualify for various kinds of responses?

A We have to inquire what the reporting party -- why they believe they are a reckless driver or drunk driver. We have to put in there a reason that they were swerving, speeding, something like that has to -- they call it just a qualifying reason for broadcasting a possible drunk driver or reckless.

Q If you were receiving a 911 call, you would -- would you need to get that information from the caller?

A Yes.

Q And in this case you received that information from Humboldt dispatch?

A Yes. They -- they advised they originally took a 911 call about a reckless driver because they were headed into our area that we cover, they give us the information.

Q And so is the -- the qualifying information , is that universal to all CHP dispatchers who receive calls -- 911 calls?

A Yeah. The highway patrol is not okay with us broadcasting just a vehicle description with no reason why it would be reported as a reckless or possible drunk driver. They have to have a reason for what they believe is reckless.

Q And so is that part of your training?

A Yes.

Q And is that actual CHP policy?

[16] A You know, I don't want to quote that it is actual written policy, but when we were trained at the academy that we have to get a reason for why we are broadcasting that someone is being reported as a reckless driver.

Q So when the Humboldt dispatcher provided you that qualifying information, were you then comfortable creating this CAD log?

A Yes.

Q And in -- in terms of time, do you have any idea how long it was between the receipt of the 911 call and the time that you actually got a phone call?

A We do ask time frame, that is why I put at Line 3 as, "last seen about five ago," that is roughly the time when they took the call and I am getting it and we are broadcasting.

Q "Five ago" means five --

A Five minutes ago.

* * *

[17] Q Okay. So then did you do anything further after receiving the information from Humboldt dispatch in creating the entry you just testified about?

A It automatically routes to whoever has the radio assigned to them. Their computer is set up to receive all logs that we make so they have information about everything that's going on currently.

Q And are you in a position to hear what actually is broadcast out to the CHP officers who are working?

A Yes. If we are not busy I can hear everything she says. If I am on another phone line I don't always hear everything they say.

Q You are in the same room?

A Yes.

Q And did you get any further information from Humboldt County or any place else that you added to what was already in the CAD log for this call?

A No. It just shows the stuff I entered as being Lines 1 through 4 and the original generation of the log with the location.

[18] Q Now, once a -- obviously the document you are holding is about three or four pages long, where does all that stuff -- what is all the other stuff --

A It shows --

Q -- in the CAD log?

A -- it shows where the radio desk person takes over. It would -- you can tell by their position, for one, I was at Position 81. She's at position 80. And they are also marked with our Adam numbers, our identifier.

Q And then how is rest of, like, that document generated, is it all automatic?

A No. It has to be entered detail by detail. Everything has to be typed out so it shows that the radio person took over and all her information -- was giving out her information to the officers and receiving their information about where they would be coming from to look for the reckless driver.

Appendix C

* * *

[20] CROSS EXAMINATION

BY MR. PETERSEN:

* * *

[22] Q Do you remember specifically in this case whether the person who was on the radio got the information from what you entered into the CAD log or just from hearing you talk to the allied dispatcher over the phone?

A I don't recall this specific incident. I don't know.

Q Okay. Is there anything in the -- this CAD log you are looking at, Exhibit 5 that reflects what the person on the radio desk would have done? Do they -- do they type anything to say they've -- they've dispatch information, so for instance --

A It shows she broadcasted it, yes.

* * *

[23] Q Oh, okay. So that means that -- this is an entry that reflects that the person on the radio desk broadcast something?

A Yes.

Appendix C

* * *

CROSS EXAMINATION

BY MR. SCHWARTZ:

* * *

[24] Q Okay. Now, you indicated that when you create the CAD log that you are talking about, this was from an actual voice-to-voice telephone conversation?

A Yes.

Q Is that correct, yes?

A Yes.

Q All right. You did not -- you actually didn't hear the 911 call; is that --

A No, I did not.

Q All right. Do you know who actually heard the 911 call at the Humboldt office?

A I did not get her identifier. We usually say our names to whoever we are speaking to, so I may have at the time heard who it was.

Q The person you talked to, was it a female?

A Yes, I believe so.

* * *

[26] Q All right. But are you recording it?

A Everything is recorded. All our phone lines and radio transmissions are recorded.

Q All right. And as far as you know, was that recording done in this particular case?

A Yes.

Q Would that also be done in Humboldt, would there be recording --

A Yes.

Q -- up there?

A Yes.

Q Is that correct?

A Yes.

* * *

[27] Q Now, when the reporting party -- let me ask you this: Is the -- if you call 911 and you are just over the Humboldt line, does it go to Humboldt?

A Sometimes. It depends on what cell tower it hits off of. So it just depends on who gets it. We get their calls, sometimes they get ours so we transfer them or if they are still in our area we take the information.

Q So in this case the reporting party could have been in Mendocino County but the call might just have gotten kicked over to Humboldt cell?

A There's no way for me to know.

Q All right. So at no time did you or your partner hear the 911 tape call itself?

A No. It did not come to our center.

* * *

[28] SHARON ODBERT,

after being first duly
sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY MS. HOUSTON:

Q Ms. Odbert, how are you employed?

A How am I employed?

Q Um-hum.

A At the highway patrol as a dispatcher.

Q How long have you been a dispatcher for the CHP?

A For six and a half years.

Q Which office do you work in?

A At Ukiah.

Q Were you working in the afternoon of August 23rd, 2008?

A Yes.

Q And did you receive information from your co-worker Matia Moore regarding a reckless driving call?

A Yes.

[29] Q Okay. Do you -- let me show you a copy of People's Exhibit 5 in case you need to use it to answer the questions.

Can you tell us how you received the information about this call?

A It came up on my -- on my computer screen. And in dispatch, my partner is the call taker and when she enters the information into the computer. Then it is routed over to

the radio and I was working the radio and the information came up on my screen.

Q So what information came on your screen?

A "Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five ago."

Q And so that entire bunch of information you just read shows up on your screen?

A Correct.

Q Okay. And then what do you do when you see that?

A Well, I give that information out to the officers in the field.

Q And how do you go about doing that?

A I broadcast it over the radio. I push the correct radio repeater and I say the words on the radio and the officers hear it.

Q Now, were you directing your broadcast to any particular officer?

A I broadcasted it to the coastal units. So I would [30] say, Attention, costal units. BOL for -- well, in this case it was a reckless driver, 23103. And then give the information, the silver, the F150 pickup, etc.

Q The license plate number?

A 8 David 94925.

Q Did you -- could you tell -- did you broadcast the direction of travel of the pickup?

A Yes. Southbound Highway 1, mile marker 88.

Q So what is the coast area in terms of who all would be hearing your broadcast geographically?

A Well, that would be, like, north coast, like Fort Bragg and Mendocino. And, like, south coast would be like Elk and Point Arena and Manchester and all those areas. So it would be all, I don't know, like north of -- of Elk. It's like that whole range when it broadcasts on the coast, that's north coast so --

Q And so this broadcast would go out to any CHP officer or would it go to other agencies as well?

A I direct my broadcast to our coastal officers, our CHP officers.

Q Okay. Now, did you -- after you did that broadcast what happened?

A Then 18-S1, which is Sergeant Francis and 18-4 advised they would be en route from Fort Bragg.

Q Who is 18-4?

A That's Officer Williams.

Q Now, how did they advise you of that?

A They said so on the radio.

[31] Q They say?

A They answered me on the radio. 18-S1 and 18-S4 en route from Fort Bragg.

Q Then do you write that down?

A That's what I did on Line 7. Actually, I am looking in here now and I see that I had put S4. I put 18-S1 and S-4 en route from Fort Bragg, but it should have been 4. And if you look at Line 9. I put right in there 18-4 is behind S1 a few miles, so actually it was just 18-4 not S4.

Q Okay. So two separate units responded to -- to go look for this car; is that what that means?

A Correct.

Q Now, did -- and then you write down then what they tell you on the radio?

A Yes.

Q So then what is the next thing that you did or heard involving this case?

A S1 advised that he had just passed the vehicle just south of mile marker 69 and 18-4 advise that he was behind S1 by a few miles. And then --

Q So did you type that information in?

A Yes. That's Lines 8 and 9.

Q Okay.

A Then Line 10, I believe this was S-1 that advised, "Will make a stop at the entrance to MacKerricher State Park."

Q And do you hear again from Officer Williams?

[32] A I am sure I did, if I can look at this. It was either S -- it must have been S1 that ran this --

S1 must have been the first one that arrived because then I was running -- I was running the 27 for -- and that's the driver's license number of Lorenzo Navarette.

Q S1 is Sergeant Francis?

A Correct.

Q And -- and then Unit 4 is Officer Williams?

A Correct.

Q And so the next thing that -- so let me ask you: Do you hear from Officer Williams before you get the request to run the driver's license?

A What I am looking for, I am sure that he advised when he -- went when he arrived on scene, which he would have said 10-97. I am -- not necessarily would have put that in the body of the log; however, it would have made it -- show in the unit history, so that's what I am looking for right now to see if -- what time that was included so I can say, "Yes, I did hear from him."

The log -- it doesn't indicate.

Q Would --

A He may not have --

Q Would --

A It does not indicate.

Q Is it -- is it part of the normal procedure that the units would notify you when they are arriving at some place that they are going to?

A Correct. When they go call 10-97 when they arrive [33] so when they are at the scene they will say, you know, in the case it would say, "18-4, 10-97."

Q That would tell you he arrived?

A Correct.

Q Now, did you this morning check to see whether or not this entry change between yourself and the officers -- whether the recording of that is still in existence?

A Yes. I did call and inquire of my supervisor if that tape was obtainable and she advised it was not.

Q Do you know how long you keep them?

A Usually six months.

Q Now, looking at that exhibit that's in front of you, People's 5, does that appear to be an accurate CAD log for the call in terms of the entry that you made in it?

A Yes.

Q And then do you continue monitoring the activities of the officers at the -- at the traffic stop until they clear the scene?

A Yes.

Q So there's a radio conversation back and forth?

A Yes.

Q And you make notes of those things?

A Yes.

* * *

[34] Q And do -- are you able to tell from the CAD log how long it was between the time that you put out the broadcast of this vehicle and when you got the first call that said they saw it?

A I broadcast at 1547 hours, which is 3:47 in the afternoon. And then S1 advised at 1600 that he had just passed the vehicle, so that was the first time he saw it.

[35] Q And that's 1600 being 4:00?

A Correct.

* * *

CROSS EXAMINATION

BY MR. PETERSEN:

* * *

[36] Q Okay. Do you know where mile marker 88 is?

[37] A Yes. It's on the north coast, way north.

Q Way north?

A Way north to me.

Q Because I think you said that you -- the original information you dispatched was the -- where the information that popped up on your screen at least was "last seen southbound at mile marker 88"?

A That's correct.

Q So other than being way north for you, you couldn't specifically point to this spot or town on Highway 1 where that mile marker is, could you?

A If I had a map I could show you.

Q Do -- let me ask you a different question: Is -- is part of your training in your job as a dispatcher to know where these mile markers are within the area you cover?

A Yes. However, since, I know where we end -- I know where our jurisdiction ends on Highway 1. And we end in the -- like the 91ish. So anything that is going to be north of that is not going to be us.

Q Okay. The numbers are going up as you go north on Highway 1?

A Yes.

Q So mile marker 91ish is north of -- or farther up away from where we are than --

A That's correct.

Q -- than mile marker 88. Mile marker 88 would have just been into your jurisdiction?

[38] A That is correct. Which is why Humboldt County advised the vehicle was traveling southbound.

Q And so when you got the -- the -- Sergeant Francis' radio that said he just passed the subject vehicle, just south of mile marker 69, do you know where that is?

A To be quite honest with you, I couldn't pin point mile marker 69 just as I couldn't say well, it's this town or this cross street. I am -- just as a ballpark I am figuring Westport, Rockport area.

Q Okay.

A Just ballpark.

Q Fair enough. But the mile marker there at 69 are the same scheme that number up to 88, right?

A I am sorry?

Q So the 69 is the same -- in the same sequence as the 88 we talked about earlier? They are all on Highway 1?

A That's correct.

Q They are counting up from wherever to 91 at the northern most end of your jurisdiction?

A Yes.

* * *

Q However the math comes out, that's how you would [39] get to that number, right?

A Okay.

* * *

CROSS EXAMINATION

BY MR. SCHWARTZ:

* * *

[40] Q Okay. Now, in this particular case where you dispatched that there was a reckless driver, in essence, at mile marker 88, you actually did not hear any 911 call; is that correct?

A That's correct.

Q This was based purely on -- I think, Ms. Moore was working with you that night?

A That was my working partner, yes.

Q Correct. This is based on her sort of passing the information on the screen to you?

A Correct.

Q Okay. Your role was the dispatch role for that night?

A Correct.

MS. HOUSTON: Day.

BY MR. SCHWARTZ:

Q You indicated earlier on direct examine that it appears from that CAD log that Sergeant Francis got there at 4:00 or 10-97 at 4:00, 1600?

A Yes.

[41] Q And that -- what that means, the 10-97, correct me if I am wrong --

A Oh, I am sorry, just to interrupt. That's the first the time -- 1600 was when S1 had just seen the vehicle. He just passed the vehicle just south of mile marker 69 at 1600 and then he advised he was making the stop at the entrance to MacKerricher at 1605.

Q All right. So 1605 is when he's actually -- is this -- he's made the stop or he's calling you saying, "I am about to make the stop"? How does that work?

A Basically he is advising he's making the stop.

Q Okay.

A Calls out, "OK, I will be making the stop at the entrance to MacKerricher," so within probably, you know, 30 seconds he's going to be doing this, it's happening.

* * *

[45] THADDEUS JOEL WILLIAMS,

after being first duly
sworn, testified as follows:

* * *

DIRECT EXAMINATION

BY MS. HOUSTON:

Q Mr. Williams, how are you employed?

A I work for the California Highway Patrol as an officer.

Q How long have you been so employed?

A Since October of '07.

Q And prior to becoming a CHP officer, did you complete a CHP academy?

A Yes.

Q And at that academy did you take and pass a class on the investigation of felony offenses and testifying

about those offenses at preliminary hearings pursuant to Prop 115?

A Yes.

Q Were you on duty and in uniform in a marked CHP unit on the 23rd of August of last year about 3:00 in the afternoon?

A Yes.

[46] Q And did you hear a dispatch that caused you to take some action?

A Yes.

Q Can you tell us if you remember where you were when you heard the dispatch?

A If I remember correctly I was in central Fort Bragg northbound on Main Street, which is Highway 1.

Q And were you with anybody else in your patrol unit?

A Yes. I was with Officer Jeremy Bowen, who was my training officer at the time .

Q And what was it that you heard dispatched?

A I remember hearing dispatch of a reckless driver southbound on Highway 1. I don't recall the exact location. It was at the north end of the area that I was supposed to cover and basically coming toward Fort Bragg.

Q Then was the vehicle described to you in the dispatch?

A Yes.

Q What was the description?

A The description was a silver pickup truck with a specific license plate number.

Q And did you make note of that license plate number somehow?

A I don't remember.

Q Okay. What did you do in response to that dispatch?

A I responded northbound in an attempt to find the [47] vehicle.

Q Were you told what direction the vehicle was traveling?

A Yes. The vehicle was traveling southbound.

Q Okay. So can you tell us whether or not you encountered the silver pickup truck at some point?

A I did encounter the silver pickup truck.

Q Where did you first see it?

A At corner -- at mile post marker 66, a few miles north of Fort Bragg.

Q And what else is around milepost marker 66?

A There's no major landmarks there. It's a couple of miles north of the small town of Cleone.

Q Okay. And was it still -- was the pickup still proceeding southbound?

A Yes.

Q And what did you do?

A At that time I let it pass and then we had another unit that was there. I let it pass and then made a U-turn and followed it as well.

Q Okay. So do you know who was in the other unit that was behind the truck?

A Yes.

Q Who?

A It was Sergeant Francis from the Fort Bragg resident post.

Q So when you made a U-turn and followed, were there any cars in between you and Sergeant Francis?

[48] A No.

Q Any cars between Sergeant Francis and the silver pickup?

A Not that I can remember, no.

Q And then what did you see happen?

A He initiated a traffic stop at -- and the vehicle stopped at the entrance to MacKerricher park, which is in Cleone. And I pulled in right behind Sergeant Francis' vehicle.

Q And then what did you do, once you got your car stopped?

A Once -- once we had both stopped, Sergeant Francis got out. There was two occupants in the pickup truck. And they stayed in and Sergeant Francis approached on the passenger side of the vehicle and I joined him and approached on the passenger side as well.

Q Okay. So both of you went to the passenger side?

A Yes.

Q And why -- why did you do that?

A It was a matter of not being in the traffic lane at the entrance to the park. It would be better to approach from a non-traffic side, generally speaking.

Q Okay. And was the passenger window up or down when you got there?

A It was down.

Q And did you notice anything when you got to the passenger side?

A The passenger side, no.

[49] Q Okay. Can you describe -- was there could you see into the bed of the pickup truck?

A No. It had a camper shell with darkened windows.

Q So what happened next?

A After that we obtained some identification from the two occupants and went back to the patrol vehicle to check through dispatch. Then at that time Sergeant Francis and I reapproached the vehicle on the driver's side.

Q Okay. So you are both on the passenger side and then Sergeant Francis got some kind of an identifying document?

A Yeah.

Q And then you both went back to your respective patrol cars?

A I -- no. I remained at Sergeant Francis' vehicle.

Q Okay. And then you both -- did you both then go back up to silver pickup?

A Yes.

Q Together?

A Together, yes.

Q On which side did you go on this time?

A At this time we went to the driver's side.

Q What had changed that caused you to go to the driver's instead of the passenger side?

A We were given – I don't remember which occupant -- had given us a -- a photo copy of a -- of driver's license. And we went to the driver's side to try to get more identifying documents.

[50] Q And so -- was the -- was it safer at that point to be on the traffic side?

A There had -- nothing -- nothing had changed, but we needed more direct contact with the driver.

Q And did you notice anything unusual as you got closer to the driver?

A As we approached the driver's side, he had his window down as well. And I noticed a very distinct smell of marijuana coming from the vehicle at that point.

Q Did you comment on that to anybody?

A Not right then. I waited to get the information from the driver. And then when we went back to check further with dispatch then we discussed it.

Q So -- so then you and Sergeant Francis went back to Sergeant Francis' patrol car again?

A Correct.

Q To talk to dispatch?

A Yes.

Q Did you have a conversation about the smell?

A We both agreed that there was a smell.

* * *

[51] Q So as a result of your discussion with Sergeant Francis, what did you do?

A As a result of that I went back to the vehicle, back to the driver's side and instructed both of the occupants to exit the vehicle and come join us at the -- at the passenger side of Sergeant Francis' patrol vehicle.

Q Did they do that?

A Yes.

Q And then once they joined you back there, what happened?

A May I refer to my report?

Q You certainly may, if it would refresh your recollection.

A Okay.

Q All right.

[52] A After they were detained we went back up to the vehicle and conducted a search of the vehicle on the -- looking for marijuana. And when I got to the bed of the truck, opening the -- the rear lift gate, found large bags of marijuana back there.

Q All right. Then let me stop you.

How were the occupants of the truck detained? Where did they go to be detained?

A We had -- Officer Bowen who was standing by them. We had them seated in the grassy area well off the shoulder, not in cuffs.

Q Okay. Then Officer Bowen was watching them?

A Yes.

Q And then did you and Sergeant Francis both proceed to search the truck?

A Yes.

Q I would like to show you what's previously been marked People's Exhibit 1 for identification and ask if you re cognize what's shown in that photograph?

A I recognize it.

Q What is it?

A The four bags of marijuana that I found in the back of the truck.

* * *

[53] Q Okay. Now, let me show you People's Exhibit 2 for identification and see if you recognize what's shown in People's 2?

A I recognize it.

Q What is it?

A It's the bag of marijuana and then an -- an unopened box of oven bags, and clippers and fertilizer.

Q Where these all things you found in the silver pickup truck?

[54] A Yes.

Q The bed of the truck --

A Yes.

Q -- inside the -- the camper?

And does it accurately reflect what it was that you saw that day?

A Yes.

* * *

[56] CROSS EXAMINATION

BY MR. PETERSEN:

Q Officer Williams, good morning.

You testified that you got a dispatch for a reckless driver southbound on Highway 1 near the north end of your coverage area, do you remember that?

A Yes.

[57] Q It was heading towards you, that's -- that's what you recall hearing from dispatch?

A Yes.

Q Then you said -- told Ms. Houston that you don't -- you -- included in that information was the license plate number of the truck, right?

A Yes.

Q But you don't recall how it is that you noted the license plate number?

A I don't specifically remember, no.

Q Do you have a computer in the car?

A Yes.

Q Okay. But you are not getting anything scrolling up on the screen that -- that replicates the information that the dispatcher has on their computer?

A Not at that time, no.

Q So the information that you got that day was solely over the radio, what you heard them transmitting to you?

A Yes.

Q Okay. Do you recall -- you were driving -- actually strike that.

You were in the car with your training officer?

A Yes.

Q And were you driving or was Officer Bowen driving?

A I was driving.

Q Okay. And so do you know if -- if you would have made a -- a note on a note pad or -- or clipboard or [58] anything in the car or would you have not done that if you are driving?

A I would not have done that as I was driving.

Q Okay. You said then that you took off northbound on Highway 1, I guess. And then you said you saw the -- the truck or a truck matching the description pass you going the other direction going southbound on Highway; is that right?

A Yes.

Q About mile marker 66?

A Yes.

Q Now, do I understand what you said, that Sergeant Francis was -- was behind the truck already also coming south, when you --

A Yes.

Q -- when you first saw him?

A Yes.

Q He wasn't behind you?

A No.

Q Okay. And so how far away was Sergeant Francis from the silver pickup truck?

A He was within visual distance of it, but I don't recall specifically.

Q Okay. Now, you never heard from Sergeant Francis that he had a visual ID on the truck or anything?

A I did hear that, yes.

Q You did not?

A I did, yes.

[59] Q So did he -- did you hear from him before you first saw the car that -- that he had the -- the subjects in view?

A Yes.

Q Okay. And then, in fact, you -- you passed the truck and there he was behind it?

A Yes.

Q Okay. Now, do I understand right, what your policy was is you both get there at the same time; is that right?

A Yes.

Q Somebody wanted to backup Sergeant Francis?

A Correct.

Q And so when you spot both the vehicles, then you made a U-turn and waited until Sergeant Francis pulled him over and you had a chance to get there and together you approached the passenger side of the vehicle; is that --

A Correct.

Q -- right?

Okay. Who was in the passenger seat?

A I would have to check my notes.

Q Would looking at your report refresh your recollection about which of the people was in the passenger seat?

A Yes.

Q Could you do that?

A Sure.

Q Just look up when you are done.

[60] A (Witness complied.)

Q Does that refresh your recollection?

A Yes.

Q Who was the passenger?

A The passenger?

Q Yes.

A You asked me who the driver was.

Q Oh, okay. Who was the driver?

A The driver was Lorenzo Prado Navarette.

Q Okay. And do you know which one of these two guys that is?

A No, sir.

Q Okay. Then the passenger by process of elimination would have been Jose Prado Navarette; is that right?

A Yes.

Q Okay. Who is the car registered to?

A Again, I would have to refer to my report.

Q Could you do that and look up when you have done that.

Who is the car registered to?

A Maria Elnada Delgado.

Q Now, you said that you approached together the -- the passenger side of the vehicle where Jose Navarette was sitting. I guess you got, you said, the photocopy of an identification and what other information and then you -- you and Sergeant Francis went back to his patrol car; is that right?

[61] A Um-hum, yes.

Q You didn't smell the odor of marijuana from the passenger side of the truck when you first approached, did you?

A No.

Q Now, then you said you ran the -- the information, I guess, whatever you obtained and -- and then you both went up to the driver's side now because you wanted to get more specific information or you wanted to specifically get something from the driver, is that fair?

A Yes. We -- I don't remember exactly. We were just going back to clarify something. I don't remember what it was we were clarifying.

Q Okay. It was only the second time that you approached the vehicle that you smelled what you characterized as a strong odor of marijuana; is that right?

A That's right.

Q Now then, you said then after discussing with Sergeant Francis then you detained both of the Navarettes and had them sit on the grass and had Officer Bowen watch them; is that right?

A Yes.

Q And then you and Sergeant Francis both searched the truck?

A Yes.

* * *

[109] MS. HOUSTON:

* * *

[111] Now, what I didn't know until today was that I didn't have the dispatcher that took the 911 call. Because of a capriciousness, perhaps, of cell phone towers, we ended up with a Humboldt dispatcher actually taking a phone call from a 911 caller who was in Mendocino County at the time the call was made, but outside, perhaps, of the area that Mendocino County CHP dispatch geographical boundaries are or maybe not. We are talking about the

-- a very rural area between Westport and Leggett, which may, in fact, have cell phone tower strangeness. In any event, the call was [112] received or translated to the Humboldt County office.

Now, I can't therefore play that tape, because I don't have the caller, I don't that dispatcher. But defense counsel knows they have a 911 call. And they know what's on that CD and it matches the facts in this case --

MR. PETERSEN: I am sorry, your Honor, I am going to object --

MS. HOUSTON: Obviously, I can't ask the Court to take notice of that, but what I can take -- ask the Court to note is that a Humboldt County dispatcher called as part of her work, a CHP dispatcher in Mendocino County and gave information with the intent that information be broadcast. And it was. And each person did what they reliably are supposed to be doing as part of their job. So that information was -- Officer Williams was entitled to rely on that information and objectively it was reasonable. And looking at some of the later cases, both the *Laurey v. Gutierrez* case that I cited and as well as the *People v. Wells* case that I cited, allow for anonymous tips.

And in this case, let's assume that this is an anonymous tip since we don't have --

THE COURT: If we have the anonymous tips, wasn't there then some corroboration at the scene to corroborate what the anonymous person that was later observed by the officer and testified to in court?

MS. HOUSTON: Well, what we have, though, is an actual license number and vehicle traveling the direction that the tipster said it would be traveling and on the road [113] that they said it was traveling on. And that it was reported and recorded down the line as a reckless driver. So if the -- as I read the cases, that even without corroborating the assertedly illegal conduct, if the anonymous tip or if the call or if the information that specifically describes the vehicle enough to provided identification, and that it's an imminent danger situation, that allows officers to rely on that information, even if it were anonymous, because we are dealing with public safety information.

* * *

[114] THE COURT: Counsel, I am -- I think there's a fairly reliable chain from Humboldt County to the officer. I just want to --

MR. PETERSEN: I was --

THE COURT: I am following that -- how it got from the person in Humboldt County through the several people here in Mendocino County then to the officer, to me that's fairly reliable. So I just want to -- if you have objections, I want you to focus on something else.

MR. PETERSEN: Oh --

THE COURT: On the 1538.5. No, anything. I see that -- I am not saying that's determinative, but that part

of the -- of the way the communication was transmitted seems fairly accurate and reliable.

* * *

[115] MR. SCHWARTZ: Well, I don't -- the only thing I would point out is that the *Wells* case, I -- I, you know, I am familiar with it and basically what the officer had was -- ran reporting off roadway and that's the whole [116] statement. And *Wells* talks about sufficiently reliable information on the driving conduct. And generally speaking, and I know this from other cases, but really I know it from this case, we have got wrong 911 tapes. What always seems to happen is the officer is always, you know, asking for more. And because you have got the 911 person on the line, dispatcher, "Well, what about this. Tell me more about the car. What's the conduct like?" And you get a lot of that back and forth going.

And that's what we don't have here. We just have, as, again, I think the Court, and I am going to understand that. There's a reliable as it got down the line to Officer Williams. But what the actual conduct is, what we have for the evidence here is just ran off the road, nothing more, 18 miles earlier. And I don't know that conclusory statement would be enough. I think it could have been anything so someone could have just been looking in their glove compartment and jerked the car to the right or something like that. Would that be sufficient in and of itself? I don't know. But I would think that statement, diluted, at least one, two, four times before it gets to Officer Williams, even if it's accurate doesn't really fit the *Wells* situation. It's just not enough basis.

It's similar to, I know, that guy's manufacturing meth in the house. You want to know the basis of how that person knows that. Is there some kind of foundation to it?

So on that I would submit it, your Honor.

* * *

EXCERPTS OF CONTINUED PRELIMINARY HEARING TRANSCRIPT OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO, DATED AUGUST 14, 2009

[132] THE COURT: People versus Lorenzo Navarette and Jose Navarette.

MR. PETERSON: I'm Brian Petersen. I represent Jose Navarette, specially appearing for Jeff Schwartz representing Lorenzo Navarette . They're both here and are being assisted by the Spanish interpreter.

MS. HOUSTON: Katherine Houston for the people.

MR. PETERSEN: We did the preliminary hearing in here a month ago, and I think you put it over for ruling on the motion to suppress, and I think for arraignment, and invited the parties to submit additional papers.

THE COURT: Yes.

MR. PETERSEN: Mr. Schwartz filed additional memorandum of points and authorities, and I sent you a

letter that said I was joining in that. And Ms. Houston also filed supplemental papers. That's where we are on it.

THE COURT: Ms. Houston, did your office file an additional memorandum?

MS. HOUSTON: I filed a document on the 8th of July. The people's further response --

THE COURT: One moment. I have reviewed that, yes. That was July 8th. On the supplemental [133] brief filed by Mr. Schwartz, it addressed primarily the basis for -- the basis for the stop depending on the type of conduct involved; in other words, where there's been an anonymous tip received with uncorroborated information whether -- and under what circumstances that would provide a sufficient basis for an officer to detain the vehicle to at least investigate the basis for the tip.

And I read that case in some detail. *People versus wells*. And *People versus Wells* discussed a number of cases had been collated on this subject. And after reviewing those, *Wells* put together or confirmed a three-step test that the court should follow.

And in Mr. Schwartz's brief he talks about the -- that the holding in *Wells* is restricted or was directed primarily to driving under the influence cases and that it should not be extended to beyond that -- beyond driving under the influence.

Appendix C

After reading the case when the *Wells* case was discussing the situation they were also referred to the Wheat (sic.) case. But they discuss about tips of drunken or erratic driving. There's nothing in the *Wells* case that specifically restricts its finding to the D.U.I. case.

I certainly agree it probably would not be extended to all types of traffic violations, but in this case the particular conduct which was reported to [134] the officer was passing a double-yellow line to the extent it forced someone off the road.

In my mind it borders on reckless and erratic driving. It falls, I think, within the scope of the conduct that is discussed in the *Wells* case and the Wheat case.

MR. PETERSEN: I'd like to just briefly address that. I'll be 30 seconds.

I think the second point Mr. Schwartz is making is that in addition to the reason for the basis as the court indicated, drunken or erratic driving, the *Wells* case talks about the articulable facts upon which the officer could reach the conclusion that further investigation is necessary.

What was missing in this case is the information was handed along from one dispatcher to another, and ultimately to the officer the details.

I don't think the officer testified, as I recall, that -- to the specifics the court mentioned by crossing the double-yellow line and almost running a person off the road.

The information conveyed to them was "ran this person off the road". And I think one of the earlier dispatchers testified what they heard from the caller is not -- the court should be looking at what the officer heard.

What was lacking is articulable facts upon which a reasonable officer could detain a driver who [135] he's observed doing nothing wrong. For -- that's the distinction between the *Wells* case and our case, and that's what Mr. Schwartz was trying to make.

I just wanted to wedge that in there.

THE COURT: The conduct was crossing the double-yellow line and driving, forcing the reporting party off the road.

That was the conduct that was reported to the detaining officer; was it not?

MR. PETERSEN: Again, your honor, by this point we may have a transcript.

Based on my own memory my recollection was that some of those details may have been reported to the first dispatcher about what the detaining officer testified he heard; a dispatch of a description of this vehicle, the Ford Pickup truck, and almost or did run the reporting party off the road.

I don't think we're disputing that. In terms of the additional details present in *Wells* which described this car

weaving around and the reporting officer could conclude that maybe there's drunk driving involved, here we only have a single report of erratic driving without the details and which, if there's no suspicion of the D.U.I., it would be impossible for a detaining officer to corroborate whether or not that was true.

I think that's the distinction between the *Wells* case and this one. By the time the car is [136] pulled over 18 miles later without a suspicion there was a D.U.I. There's nothing a reporting officer could investigate short of looking for paint samples or forensic testing to determine whether this car was weaving without suspicion that it was a D.U.I. or some condition that would still exist at the time of the stop or further details upon which a reasonable officer could conclude there's a D.U.I., there's something essential that is lacking.

THE COURT: Ms. Houston, any comments?

MS. HOUSTON: We're not trying a reckless driving case here. This is not a case in which we are attempting to prove beyond a reasonable doubt that the operators of the truck violated 23103 of the vehicle code in the driving that involved the reporting party.

All we need to do is overcome the *Harvey Madden* line of cases that say we have to prove that they didn't manufacture probable cause at the application, that the police officers didn't make up a reason to stop the car. We have done that.

Appendix C

We have produced a caller who provided concrete information to the dispatcher who provided that information to a dispatcher who provided that information to the outbound dispatcher who provided the facts about the truck and the license number and the description of travel and all of that to the officer.

[137] The decision then by the officer is simply to be able to pull over this vehicle and find out why the erratic driving occurred. If it turns out the people aren't intoxicated then there may be nothing else he can do, other than to warn them. But until he stops the car he can't tell whether they are intoxicated or not or whether they are ill or racing somebody, or whatever the reason might be.

But the issue in this case is not is the driver guilty of a 23103, the issue is have we sufficiently shown that the officer who stopped the car didn't make up a reason to stop it out of thin air. And that I think has been shown manifestly clearly.

THE COURT: I'm not sure that it' s shown manifestly clearly, but I think it's been shown sufficiently.

MR. PETERSEN: I thought the court decided that when we were here for the hearing that this wasn't a Harvey issue. The issue is whether the information to communicated the officer was enough for him to detain the car.

THE COURT: And I'm looking at it in view of the *Wells* case as well. And in *Wells* the only conduct that was reported to the officer was that the car was weaving.

The fact that the person said that the driving -- the driver might have been drunk, that is [138] obviously speculation on the calling party's part. So what the officer had there was testimony that there was some kind of erratic driving that could be consistent with drunk driving.

And I think this is conduct similar to that where someone forced another person off the road that could possibly be some type of drunk driving as well, and I think that would justify the stop.

And the officers, when they did stop, they did at least confirm what they called the innocent (sic.) details of the tip, that is the make of the vehicle, the color, the license number.

And I'm also taking into consideration -- I know there was time passed between the report and the stop, but this occurred on a two-lane road.

So all those things considered, I'm going to deny the 1538.5 motion and hold the defendants to answer.

* * * *

PETITIONER'S BRIEF

RECORD AND BRIEFS

No. 12-9490

Supreme Court, U.S.
NOV 15 2013
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

LORENZO PRADO NAVARETTE
AND JOSE PRADO NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

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OPINIONS BELOW

The opinion of the First Appellate District Court of Appeal for the State of California appears at Appendix A to the Petition For A Writ Of Certiorari ("Petition") and is unpublished. The opinions of the Mendocino County Superior Court appear at Appendix B to the Petition and are unpublished. The order of the California Supreme Court denying a petition for review appears at Appendix C to the Petition and is unpublished. The order of the Court of Appeal denying a petition for rehearing appears at Appendix D to the Petition and is unpublished.

JURISDICTION

The First Appellate District Court of Appeal for the State of California issued its opinion in this case on October 12, 2012. A petition for review to the California Supreme Court was filed on November 26, 2012 and denied on January 3, 2013. The Petition to this Court was filed on March 29, 2013, and granted on October 1, 2013.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. Matia Moore and Sharon Odbert were working as dispatchers for the California Highway Patrol ("CHP") out of Ukiah, Mendocino County, on August 23, 2008. Joint Appendix ("JA") 20a-21a, 34a-35a. Dispatchers sometimes receive calls on an inside or allied telephone line from CHP dispatchers in other areas, including reports of reckless vehicles or possible drunk drivers heading into their area. JA 23a-24a. Information from all of the calls is typed into computer or "CAD" logs. JA 21a-22a, 24a-25a, 35a-36a.

Although Moore did not recall the specific incident in this case, JA 31a, she generated a CAD log based on a telephone call with a Humboldt County dispatcher who indicated that a silver Ford F150 pickup truck had run someone off the roadway and was last seen five minutes before, southbound near mile marker 88 on Highway 1, approximately 3 miles south of the Humboldt County border. JA 25a-27a, 29a-30a, 42a-44a. The Humboldt dispatcher said the information had come from a 911 call,

but provided no further information. JA 27a-28a. Neither Moore nor Odbert heard the 911 call, and Moore did not even know whether the Humboldt dispatcher she spoke to had personally received the 911 call. JA 32a, 45a. There was no way to tell whether the reporting party was in Humboldt or Mendocino County. JA 33a-34a.[1]

The information was routed to Odbert's computer and appeared as follows:

> Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-949925. Ran the reporting party off the roadway and was last seen approximately five [minutes] ago.

JA 36a, see 29a.

Odbert broadcast the information over the radio to "coastal" officers in Mendocino County from Elk to Fort Bragg at 3:47 p.m, stating, "Attention, coastal units. BOL for – well, in this case it was a reckless driver, [California Vehicle Code section] 23103. And then give the information, the silver, the F150 pickup, etc. *(sic)*." JA 36a-37a, 42a. Although the broadcast was recorded, the tapes are only kept for six months, and were no longer available at the time of the preliminary hearing. JA 33a, 41a.

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1. The prosecutor indicated that the tape of the 911 call "has the woman's name," but said she had mistakenly failed to have the Humboldt County dispatcher appear at the hearing and did not play the tape. Accordingly, the tip was treated as anonymous by the courts below. JA 18a-19a, 64a-65a, 73a-74a; Appendix A to Petition, A2, A24; Appendix B to Petition, A27.

Officer Thaddeus Williams was in central Fort Bragg when he heard a "dispatch of a reckless driver southbound on Highway 1," in the area he was patrolling. JA 48a–49a, 57a-58a.[2] The vehicle was described as a silver pickup truck with a specific license plate number, though Williams could not recall if he noted the plate number. JA 49a, 58a. Williams, who received only oral information over the radio from dispatch that day, JA 58a, headed north in an attempt to find the truck. JA 49a, 59a. Williams was a few miles behind a Sergeant Francis, who was also enroute from Fort Bragg. JA 37a-38a.

At 4:00, Francis advised dispatch that he had passed the truck, which was going the opposite direction, just south of mile marker 69, approximately 19 miles south of the last sighting. JA 37a, 39a, 42a-46a. Shortly after hearing that Francis had spotted the vehicle, Williams saw Francis following the truck at mile marker 66, which was a couple of miles north of a state park located in the town of Cleone. JA 49a-51a, 59a-60a. Williams let both vehicles pass, then made a U-turn to follow Francis. JA 50a-51a, 61a. At 4:05, Francis advised dispatch that he was making a stop at the entrance to the state park and Williams pulled up behind him, approximately five miles south of where Francis had first seen the truck. JA 39a,

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2. The Court of Appeal found that substantial evidence supported an implied finding by the magistrate that the dispatcher had told the officers that the suspect vehicle ran the tipster off the road, not just that there was a reckless driver. Appendix A at A20-A23. Petitioner filed a petition for rehearing, arguing that the magistrate had not made that finding, which was contrary to the testimony of both Odbert and Williams, and that no substantial evidence supported such a finding had it been made. The petition was denied on October 30, 2012. Appendix D.

46a-47a, 49a-51a, 61a. There was no evidence that either officer had seen any erratic driving while following the truck. JA 49a-51a, 57a-61a.

There were two people in the truck, which had a camper shell with darkened windows so the officers could not see into its bed. JA 51a-52a. Petitioner Lorenzo Navarette was driving, with petitioner José Navarette as a passenger. JA 61a-62a. Although they did not notice anything unusual at first, the officers eventually detected a distinct smell of marijuana coming from the truck. JA 52a-54a, 63a-64a. During a subsequent search, the officers discovered four large, closed bags of marijuana in the bed, along with a box of oven bags, clippers, and fertilizer. JA 54a-57a.

2. The Mendocino County District Attorney alleged that petitioners had transported marijuana in violation of California Health and Safety Code section 11360, subdivision (a), and possessed marijuana for sale in violation of section 11359. JA 14a-16a. Petitioners filed a motion to suppress the warrantless search and seizure pursuant to Penal Code section 1538.5, which was heard and denied as part of the preliminary hearing. JA 73a-74a; Appendix E to Petition. In denying the motion, the magistrate relied primarily on *People v. Wells*, 38 Cal.4th 1078, 136 P.3d 810, 45 Cal.Rptr.3d 8 (2006), which held that, despite this Court's holding in *Florida v. J.L.*, 529 U.S. 266 (2000), officers investigating an anonymous tip of a possibly intoxicated driver were constitutionally justified in stopping a vehicle immediately, without corroboration. The magistrate rejected petitioners' attempts to distinguish the case from *Wells*, determining that the report of someone forcing another person off

the road could be consistent with drunk driving, and the officers' corroboration of the innocent details justified the stop. JA 73a-74a.

Petitioners subsequently filed a motion to dismiss pursuant to Penal Code section 995, in part seeking review of the magistrate's denial of the motion to suppress. The trial court denied the section 995 motion, rejecting petitioners' claim that the tip's assertion of being run off the road was too vague to satisfy *Wells*, and finding that the officers had reasonable suspicion for the stop under *Wells*. Appendix B to Petition, A32-A33. The trial court also denied a motion to reconsider, finding it immaterial that the officer testified only to receiving information about a reckless driver, with no mention of the tipster's claim to being run off the road. Appendix B to Petition, A35-A37.

3. Petitioners filed a joint petition for writ of mandate with the Court of Appeal, which was denied on timeliness and procedural grounds. *Navarette v. Superior Court*, Case No. A127541; JA 8a-9a. Petitioners then filed a petition for review with the California Supreme Court, which was denied without comment. *Navarette v. Superior Court*, Case No. S180366; JA 10a.

4. Petitioners ultimately pled guilty to transportation of marijuana in violation of Health and Safety Code section 11360, subdivision (a), pursuant to a plea agreement. Clerk's Transcript on Appeal ("CT") 268; Reporter's Transcript on Appeal ("RT") 147-148, 153-156. On June 10, 2011, the trial court suspended imposition of judgment, placed petitioners on thirty-six months formal probation, and ordered them to serve 90 days in county jail. CT 303-309; RT 177-178.

5. Petitioners timely appealed. The Court of Appeal affirmed the judgment in an Opinion filed on October 12, 2012. Appendix A to Petition, A1-A25. The Court of Appeal acknowledged this Court's holding in *J.L.*, but found that it was bound by the decision of the California Supreme Court in *Wells*, which "held that the danger exception postulated in *J.L.*, ... applies when an anonymous tipster contemporaneously reports drunken or erratic driving on a public highway and officers are able to corroborate significant innocent details of the tip,..." A16. The Court of Appeal rejected petitioners' claim that the tip in this case did not provide enough information about the alleged illegal driving to satisfy *Wells*. A18-A19. The Court further determined that it need not decide "whether a report of 'reckless driving' alone would have been too vague to support reasonable suspicion for the stop," A23, because there was substantial evidence in the record to support an implied finding by the magistrate that "the dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway." A20; see A20-23, nn. 7-8. Finally, the Court of Appeal dismissed petitioners' contention that, by the time they stopped the truck, the officers had no reasonable suspicion of criminal activity because they had been following the truck "for five minutes without observing any erratic driving." A23-A24.

The Court of Appeal denied without comment a timely petition for rehearing on October 30, 2012. Appendix D to Petition.

6. The California Supreme Court denied without comment petitioners' timely petitions for discretionary review on January 3, 2013. Appendix C to Petition.

7. Petitioners filed a timely Petition to this Court on March 29, 2013, which was granted on October 1, 2013.

SUMMARY OF ARGUMENT

The Fourth Amendment prohibits an officer from stopping a vehicle and detaining its occupants based on an anonymous tip of drunken or reckless driving unless the officer can corroborate the dangerous driving.

I. Under the Fourth Amendment, an officer cannot stop an individual vehicle and detain its occupants unless, under the totality of the circumstances, that officer has a reasonable suspicion, supported by specific and articulable facts, that one of the occupants is engaged in criminal activity. *United States v. Arvizu*, 534 U.S. 266 (2001); *Terry v. Ohio*, 392 U.S. 1 (1968).

This Court has expressed a well-founded skepticism of anonymous tips. Anonymous informants cannot be held responsible for false assertions of illegal conduct and are therefore free to lie with impunity, putting innocent people at risk of unreasonable, intrusive searches and seizures. To protect the Fourth Amendment rights of those people, this Court has held that the suspicion engendered by anonymous tips does not rise to the level of the reasonable suspicion necessary to justify a seizure unless officers are able to corroborate those tips. *Alabama v. White*, 496 U.S. 325 (1990). In *Florida v. J.L.*, 529 U.S. 266 (2000), the Court further held that corroboration of innocent, readily observable facts contained in a tip does not satisfy the Fourth Amendment. "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* at 272.

II. The California Court of Appeal erroneously approved the vehicle stop in this case even though, as in *J.L.*, the officers made the stop based on information provided by an anonymous tipster that, except for the innocent details, the officers did not corroborate. Without that corroboration, the officers lacked the reasonable suspicion necessary to stop the vehicle and detain its occupants. *Delaware v. Prouse*, 440 U.S. 653 (1979); *Terry*. The Court of Appeal stated that it was bound by the California Supreme Court's decision in *People v. Wells*, 38 Cal.4th 1078, 1081, 1087-1088, 136 P.3d 810, 45 Cal.Rptr.3d 8 (2006), which had held that an anonymous tip about a possibly intoxicated driver provided an officer with the reasonable suspicion necessary to stop a vehicle immediately, without corroboration.

III. *Wells* and other lower court cases have created a new "automobile exception" to *Terry's* reasonable suspicion standard and to *J.L.*'s requirement that anonymous tips be corroborated. The courts have relied on a brief passage in *J.L.* speculating about the potential need to relax *Terry's* requirements if authorities received a tip about a catastrophic danger, such as a person carrying a bomb. 529 U.S. at 273-274. The *J.L.* opinion gives no indication that, in that passage, the Court intended to sanction a different exception to *Terry* that would be triggered by every anonymous tip about drunken or reckless driving. On the contrary, just prior to the bomb passage, the Court had emphatically rejected an automatic "firearm exception" to *Terry* that is doctrinally indistinguishable from the new automobile exception created by the courts. In rejecting the firearm exception, this Court was concerned both about the potential for any automatic exception to "swallow the rule," and about giving such a

weapon to anyone who wanted to harass another person. The new automobile exception created by the courts poses exactly the same risks.

Attempts to distinguish tips about drunken or reckless driving from the tip about illegal firearm possession in *J.L.* do not withstand scrutiny. Firearm possession can become firearm use in a matter of seconds, and the statistics show that more people die each year in firearm-related homicides than in alcohol-impaired vehicle crashes. There is nothing about anonymous tips involving driving that make them inherently more reliable than other type of tips. False, malicious tips about erratic driving are easy to make and less risky for the tipster than other types, because there is no way to prove that a driver did not drive erratically. Unlike tips about illegal possession, officers can easily corroborate tips about erratic driving through observation, if true, and corroboration may also be available from other sources, such as the receipt of multiple, independent reports about a particular, dangerous driver. Finally, the stop of a vehicle and the detention of its occupants is just as intrusive as a stop on a sidewalk. Like a pedestrian, drivers and occupants of stopped vehicles are subject to a *Terry* patdown search if the officer believes they are armed and dangerous.

IV. Anonymous tips about erratic driving are too unreliable to provide the reasonable suspicion required under the Fourth Amendment to justify the stop of a vehicle and the detention of its occupants. All of the compelling reasons given by this Court for rejecting the "firearm exception" in *J.L.* apply with equal force to the new "automobile exception" created by the lower courts, which puts everyone at risk of intrusive seizures based on malicious tips.

This Court should reverse the judgment of the California Court of Appeal.

ARGUMENT

I. An Anonymous Tip Does Not Provide The Reasonable Suspicion Necessary To Stop A Vehicle And Detain Its Occupants Unless Officers Corroborate The Informant's Allegation Of Dangerous Driving

The decision of California's First Appellate District Court of Appeal is contrary to this Court's unanimous holding in *Florida v. J.L.* 529 U.S. 266 (2000), and to important principles established by this Court to determine whether officers possess the reasonable suspicion necessary to detain an individual, or a vehicle and its occupants. As in *J.L.*, the officers' suspicions that petitioners had been driving recklessly "arose not from their own observations but solely from a call made from an unknown location by an unknown caller." *Id.* at 270. Anonymous tips alone do not provide reasonable suspicion because a truly anonymous informant cannot be held accountable for false allegations and is free to "lie with impunity" *Id.* at 275 (Kennedy, J., concurring). Elimination of accountability "is ordinarily the very purpose of anonymity." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 385 (1994) (Scalia, J., dissenting).

In *J.L.*, this Court refused to adopt an automatic "firearm exception" to the reasonable suspicion standard established in *Terry v. Ohio*, 392 U.S. 1 (1968). Although firearms posed an obvious danger to the public, the creation of an exception to *Terry* based on an

uncorroborated, anonymous report of firearm possession "would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by making an anonymous call falsely reporting the target's unlawful carriage of a gun." 529 U.S. at 272. The firearm exception rejected by this Court in *J.L.* is doctrinally indistinguishable from a new "automobile exception"[3] created by the lower courts, permitting stops of vehicles based on uncorroborated, anonymous reports of drunken or reckless driving.

In deciding the case now before it, this Court should combine its well-founded skepticism of anonymous tips with its traditional determination that the Fourth Amendment prohibits officers from stopping individual vehicles and their occupants unless they have a reasonable, particularized suspicion of criminal activity. *United States v. Cortez*, 449 U.S. 411 (1981); *Delaware v. Prouse*, 440 U.S. 653 (1979). Without corroboration, an anonymous tip about reckless or drunken driving simply cannot supply the reasonable suspicion necessary to justify a vehicle stop under the Fourth Amendment. *J.L.*, 529 U.S. at 270-274. The level of suspicion in this case was even lower than in

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3. This new "automobile exception" adopted by lower courts is quite different from the traditional "automobile exception" to the warrant requirement adopted by this Court in *Carroll v. United States*, 267 U.S. 132 (1925). The new exception is not related to the warrant requirement, but is an exception to the principles established in *J.L.* and *Terry* to ensure that officers possess reasonable suspicion of criminal activity before they initiate a stop. The term "'automobile' exception" was first used in this context by a justice dissenting in one of the first post-*J.L.* cases to adopt the new exception, *State v. Boyea*, 171 Vt. 401, 765 A.2d 862, 880 (2000)(Johnson, J., dissenting).

J.L., because the officers' personal observations actually undermined the tip's assertion of illegality.

The new, automatic exception adopted by the lower courts is contrary to this Court's Fourth Amendment jurisprudence and constitutes a totally unacceptable violation of the individual citizen's "right to be let alone – the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)(overruled by *Katz v. United States*, 389 U.S. 347, 357 (1967).

A. Before Stopping A Vehicle And Detaining Its Occupants, An Officer Must Have A Particularized, Reasonable Suspicion That An Occupant Is Engaged In Criminal Activity

Prior to *Terry*, "the Fourth Amendment's guarantee against unreasonable seizures of persons was analyzed in terms of arrest, probable cause for arrest, and warrants based on such probable cause." *Dunaway v. New York*, 442 U.S. 200, 207-208 (1979). While warrants were not always required, the need for probable cause "was treated as absolute." *Id.* at 208. Warrantless searches were, and still are, "*per se* unreasonable under the Fourth Amendment – subject to a few specifically established and well-delineated exceptions." *Katz*, 389 U.S. at 357; see *Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013); *Arizona v. Gant*, 556 U.S. 332, 338 (2009); *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993).

Terry established a new exception to the warrant requirement, holding that an officer could briefly detain an individual without probable cause if the officer observed

"unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." 392 U.S. at 30. The Court "emphatically" rejected the suggestion that police actions short of a traditional arrest fell outside the Fourth Amendment, "recogniz[ing] that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Id.* at 16. But because the detention was substantially less intrusive than an arrest – even when followed by a patdown search for weapons, *id.* at 24 – the Court determined that probable cause was not required. *Dunaway*, 442 U.S. at 209-210, citing *Terry*, 392 U.S. at 20-27.

The Court emphasized that, despite the lower standard it was adopting, the "notions" underlying both probable cause and the warrant requirement "remain fully relevant in this context." *Terry*, 392 U.S. at 21. The officer cannot rely on "an inchoate and unparticularized suspicion or 'hunch,'" *id.*. at 27; on the contrary, "in justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. "This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.* at 21 n.18.

As the Court explained in *Dunaway*, "Because *Terry* involved an exception to the general rule requiring probable cause, this Court has been careful to maintain its narrow scope." 442 U.S. at 210. One common form of seizure that falls within *Terry*'s narrow scope is the routine traffic stop of individual vehicles on public roads

and highways. "[S]topping an automobile and detaining its occupants constitute a 'seizure' ..., even though the purpose of the stop is limited and the resulting detention quite brief." *Prouse*, 440 U.S. at 653. The protections of the Fourth Amendment under *Terry* "extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest." *United States v. Arvizu*, 534 U.S. 266, 273 (2001). This Court recently confirmed that stopping a vehicle constitutes a seizure of everyone in that vehicle, not just its driver. *Brendlin v. California*, 551 U.S. 249, 255-256 (2007).

When officers stop individual vehicles and detain their occupants, as they did in this case, the Fourth Amendment requires an evaluation of "the totality of the circumstances .... Based upon that whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-418 (1981) ; see also *Arvizu*, 534 U.S. at 273-274.[4]

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4. While the Court has not approved any suspicionless stops of individual vehicles, it has sanctioned the use of checkpoints in certain limited circumstances to stop all vehicles passing a particular point. See, *e.g.*, *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990)(sobriety checkpoints); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)(border checkpoints). These cases typically balance the governmental interest in interdicting certain actions against the much lower level of intrusion involved in checkpoints, an approach that heavily favors the government and is not appropriate in cases involving stops of individual vehicles, such as the one at issue in this case, which require individualized suspicion. See Thomas K. Clancy, *The Fourth Amendment: Its History and Interpretation* 473-531 (Carolina Press 2008), arguing that the Court should develop a hierarchy of approaches to determining reasonableness under the Fourth Amendment, with individualized suspicion as the first choice.

B. The Suspicion Provided By An Anonymous Tip Does Not Rise To The Level Of Reasonable Suspicion Unless Officers Corroborate It

While traffic stops are typically based on the personal observations of the officer making the stop, *Whren v. United States*, 517 U.S. 806, 810 (1996); *Prouse*, 440 U.S. at 659, the Court decided in *Adams v. Williams*, 407 U.S. 143 (1972), that the reasonable suspicion necessary to conduct a *Terry* stop could be based, not only on an officer's personal observations, but also on information provided to the officer by a known informant who had provided information in the past. *Id.* at 146-147.

The informant in *Adams* approached the officer personally to advise him "that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist." 407 U.S. at 144-145. The information provided by the informant was immediately verifiable and subjected her to immediate arrest if it turned out to be incorrect, making this "a stronger case than obtains in the case of an anonymous telephone tip." *Id.* at 146. The Court warned that such tips "vary greatly in their value and reliability" and some, "completely lacking in indicia of reliability, would warrant no police response or require further investigation before a forcible stop of a subject would be authorized." *Id.* at 147. Primarily because the tipster was known to the officer and was accountable for false information, the tip was deemed reliable enough that, under *Terry*, the officer could order the occupant out of the car and seize the gun from his waist. *Id.* at 147-148.

When the Court addressed the question of whether an anonymous telephone tip could provide reasonable

suspicion for a seizure in *Alabama v. White*, 496 U.S. 325 (1990), it followed the "totality of the circumstances" approach it had developed in *Illinois v. Gates*, 462 U.S. 213 (1983), to evaluate anonymous tips in the context of probable cause. *White*, 496 U.S. at 328-329. *Gates* had found that anonymous tips could help solve "otherwise 'perfect crimes'" even though "the veracity of persons supplying anonymous tips is by hypothesis largely unknown, and unknowable."[5] 462 U.S. at 237-238. The Court noted the continued relevance of factors such as the informant's veracity, reliability and basis of knowledge, *id.* at 230, and emphasized that its prior decisions in the area "have consistently recognized the value of corroboration of details of an informant's tip by independent police work." *Id.* at 241.

The anonymous tipster in *White* said that a woman would be leaving an apartment at a particular time and driving an easily identifiable car to a named motel, all the while carrying an ounce of cocaine in a brown attache case. 496 U.S. at 326. The Court noted that, "if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Id.* at 330. Standing alone, the tip's indicia of reliability was too low to provide reasonable suspicion to stop the vehicle, but the police were able to corroborate the woman's actions in driving toward the motel, and "[w]hat was important was the caller's ability to predict [the suspect's] future

5. "I can imagine no reason why an anonymous leaflet is any more honorable, as a general matter, than an anonymous phone call or an anonymous letter. It facilitates wrong by eliminating accountability, which is ordinarily the very purpose of anonymity." *McIntyre*, 514 U.S. at 385 (Scalia, J., dissenting).

behavior, because it demonstrated inside information." *Id.* at 331-332. Applying the totality of the circumstances test the Court approved the stop, but described it as a "close case." *Id.* at 331-332.

Florida v. J.L., 529 U.S. 266, involved an anonymous caller who told police "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." *Id.* at 268. Officers saw three black males at the bus stop, including one in a plaid shirt, but they saw no gun, and no threatening or unusual movements. *Id.* Apart from the tip, the officers had no reason of suspecting any of the males were engaged in criminal activity, but they frisked all three and found a gun on J.L., who was fifteen at the time. *Id.* at 268-269.

While acknowledging the problems posed by anonymous tips that it had noted in *White*, the Court said that it had recognized in *White* that "there are situations in which an anonymous tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.'" 529 U.S. at 270, quoting *White*, 496 U.S. at 327. The tip in *White* provided the officers with suspicion, and that suspicion "became reasonable after police surveillance" showed the tipster had accurately predicted White's movements, though the Court also warned that simply having knowledge about a person's future movements "does not necessarily imply that the informant knows, in particular, whether that person is" engaged in criminal activity. *J.L.*, 529 U.S. at 270-271.

The tip about J.L. "lacked the moderate indicia of reliability present in *White*" because it "provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." *Id.*

at 271. Discovery of the gun did not retroactively provide the requisite indicia of reliability to the tip. *Id.* at 271. "All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L." *Id.* at 271. While the tip had accurately described J.L. and said where he would be, "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* at 272.

Although the officers were able to corroborate the tip's description of J.L.'s "readily observable location and appearance," they saw nothing to corroborate the tip's assertion that he had illegal possession of a firearm, so the tip lacked the "indicia of reliability" necessary to justify a stop and frisk. 529 U.S. at 272-274. Unlike the situation in *White*, the suspicion prompted by the tip never became reasonable, due to the lack of corroboration. *Id.* at 272-274.[6]

II. The Vehicle Stop In This Case Violated The Fourth Amendment Because It Was Based On An Uncorroborated Anonymous Tip

California's First Appellate District Court of Appeal approved a vehicle stop and the detention of its occupants based solely on an anonymous tip about reckless driving that investigating officers did not corroborate, directly

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6. As discussed in detail in section III.A *infra*, the Court also rejected a request from Florida and from the United States as *amicus* to establish a "firearm exception" to *Terry*, under which a tip about an illegal gun would automatically justify a stop and frisk without corroboration. 529 U.S. at 272.

conflicting with this Court's holdings in cases involving both vehicle stops and anonymous tips. Appendix A, A14-A25.

Under the Fourth Amendment, officers must have a reasonable suspicion based on articulable facts that the occupants of a vehicle are engaged in criminal activity before they are justified in seizing that vehicle. *Cortez*, 449 U.S. at 417-418; *Prouse*, 440 U.S. at 653; *Terry*, 392 U.S. at 21, 27. Where officers are relying on anonymous tips rather than their own observations, they must corroborate not just the tip's innocent details, but also its "assertion of illegality." *J.L.*, 529 U.S. at 272.

The decision of the California Court of Appeal is clearly contrary to this Court's Fourth Amendment precedents. As in *J.L.*, the officers' decision to stop the truck "arose not from any observations of their own but solely from a call made from an unknown location by an unknown caller," *J.L.*, 529 U.S. at 270, with the tip potentially originating in either Humboldt or Mendocino County. JA 33a-34a. Dispatcher Odbert and Officer Williams both testified that Odbert advised Williams to be on the lookout for a reckless driver. JA 36a-37a, 45a, 48a-49a, 57a.[7] This "bare report of an unknown, unaccountable informant," *J.L.*, 529 U.S. at 271, may have prompted some suspicion about an identifiable truck, but the suspicion could not rise to the level of reasonable suspicion without corroboration. The assertion of "reckless driving" provided no information

7. While this Court has held that the "collective knowledge doctrine" allows police officers to rely on reasonable suspicion formed by other officers, *United States v. Hensley*, 469 U.S. 221, 229-236 (1985), it has never extended the doctrine to include information known to civilian dispatchers but not conveyed to the officers themselves.

about whether the tipster personally observed any reckless driving, or what it allegedly consisted of. *White*, 496 U.S. at 327-332; see also *State v. Kooima*, 833 N.W.2d 202, 208-211 (2013); *Nilsen v. State*, 2009 OK CR 6, 203 P.3d 189, 192 (2009). Even if the tipster had personally observed reckless driving, there are many reasonable explanations for a maneuver by a driver that could be construed by other motorists as "reckless" – such as an unruly child or other distraction – so that a single report, under the totality of the circumstance, would not warrant a seizure of the vehicle and all of its occupants. *Cortez*, 449 U.S. at 417-418.

Unlike the information given in *White*, the tip here did not provide any predictive or inside information, such as where the truck would be turning off or its final destination. The tipster did say the truck was going south on Highway 1, but anyone who saw the truck heading south on Highway 1 could have provided exactly the same information regarding the location and direction of the truck, including a "prankster, or someone with a grudge." *Harris v. Commonwealth*, 276 Va. 689, 668 S.E.2d 141, 145-146 (2008). The officers had no means of corroborating the tip's assertion that reckless driving had occurred nineteen miles away from the spot where Francis first spotted the truck, JA 37a, 39a, 42a-46a, and they were unable to corroborate any ongoing reckless driving despite following the truck for approximately five miles before pulling it over. JA 39a, 46a-47a, 49a-51a, 61a.[8]

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8. The prosecution presented no evidence that the officers had observed dangerous driving even though, at a motion to suppress, the prosecution has the burden of establishing that a warrantless search or seizure was justified under the Fourth Amendment. *People v. Redd*, 48 Cal.4th 691, 719, 229 P.3d 101, 108 Cal.Rptr.3d 192 (2010).

Based on a presumed finding it believed had been made by the magistrate who conducted the suppression hearing, the Court of Appeal concluded the officers were told that the truck had run the reporting party off the roadway, as the tipster had advised the Humboldt dispatcher, not merely to be on the lookout for a reckless driver. A20-A23. Even accepting the Court of Appeal's interpretation of the evidence, its holding is not consistent with this Court's Fourth Amendment precedents. The addition of this uncorroborated assertion theoretically explains how the informant knew about the alleged reckless driving, but still provides no specific information about what the targeted vehicle actually did. The informant may simply have felt he or she had been forced off the roadway because the truck was following too closely on the "undivided two-lane road." A-24. Since the tip was still anonymous the tipster was free to "lie with impunity," *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring), and could easily have exaggerated the incident, or fabricated it entirely.

This Court in *J.L.* rejected a "firearm exception" to its corroboration requirement because of the Court's concern that false, anonymous tips could too easily be used to deprive citizens of their Fourth Amendment rights, and required corroboration as to the "assertion of illegality" to address that concern. *J.L.*, 529 U.S. at 272. Contrary to the Court of Appeal's conclusion, the officers' corroboration of innocent details in this case did not "sufficiently establish[] the reliability of the tip to support reasonable suspicion." A18; see *J.L.*, 529 U.S. at 270-274.

The Court of Appeal justified its holding in part because "the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger

to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity." A18. But the report said the truck had last been seen more than twenty minutes before Francis next saw it, and more than nineteen miles away. JA 29a, 37a, 39a, 42a-47a. The officers had no information suggesting the truck was tailgating, running people off the roadway or engaging in any other form of reckless driving during that time, and therefore no reason to suspect that it constituted an "ongoing danger" to anyone. The "danger" posed by a single, distant, reckless driving incident – which was never connected in any way to drunken driving – did not provide the reasonable suspicion required to stop the truck. *Cortez*, 449 U.S. at 417-418.

The Court of Appeal acknowledged this Court's ruling in *J.L.*, including the requirements that an anonymous tip must be "'suitably corroborated' and be 'reliable in its assertion of illegality, not just in its tendency to identify a determinate person.'" A16, citing 529 U.S. at 270, 272. But the Court of Appeal felt bound by the California Supreme Court's decision in *People v. Wells*, 38 Cal.4th 1078, 1081, 1087-1088, 136 P.3d 810, 45 Cal.Rptr.3d 8 (2006), which had held that an anonymous tip about a possibly intoxicated driver provided an officer with the reasonable suspicion necessary to stop a vehicle immediately, without corroboration. Opinion at A18-A19 n.6. As discussed in detail in section III, *infra*, this new, bright-line exception to the bedrock requirement of reasonable suspicion to stop an individual vehicle is contrary to this Court's Fourth Amendment jurisprudence.

Finally, the Court of Appeal erred in rejecting petitioners' contention that, even if *Wells* had authorized

an immediate stop of the truck without corroboration, the officers in this case did not stop the truck immediately, and instead followed the truck for approximately five miles without observing anything to corroborate the tip's assertion of reckless driving. Opinion at A23-24; see JA 39a, 46a-47a, 49a-51a, 61a.[9] By the time the officers pulled the truck over they had confirmed that it was not being driven dangerously, undermining any suspicion of criminal activity prompted by the anonymous tip. The officers in this case had no more reasonable suspicion that petitioners were involved in criminal activity than did the officer conducting spot checks in *Prouse*, 440 U.S. at 650, and their discovery of marijuana was just as serendipitous. Under the totality of the circumstances, *Arvizu*, 534 U.S. at 273-274; *Cortez*, 449 U.S. at 417, the extended period of observation negated any justification for stopping the truck.

III. The New "Automobile Exception" Created By The Lower Courts Is Contrary To This Court's Fourth Amendment Jurisprudence

A. The Courts' Reliance On The Brief "Bomb" Passage In *J.L.* To Justify A New Exception That Swallows The Rule of *J.L.* and *Terry* Is Misplaced

In sanctioning the stop of petitioners' truck despite the officers' failure to corroborate the tip's assertion of reckless driving, the Court of Appeal relied on the

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9. Although the Court did not grant certiorari on the second question presented in the Petition, this distinction between *Wells* and the instant case provides the narrowest ground on which the Court could reverse the judgment of the Court of Appeal.

adoption of an "automobile exception" to *J.L.* and *Terry* by the California Supreme Court in *Wells*, 38 Cal.4th at 1082, 1088. A16-A19. *Wells* in turn relied heavily on *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001), which involved an anonymous tip about a particularly described vehicle being driven erratically, including "passing on the wrong side of the road, cutting off other cars, and otherwise being driven as if by a 'complete maniac.'" *Id.* at 724.

As in *Wells*, 38 Cal.4th at 1081, the officer in *Wheat* stopped the vehicle as soon as he saw it. *Wheat*, 278 F.3d at 724-725. The Eighth Circuit held, despite *J.L.*, that "an anonymous tip about the dangerous operation of a vehicle whose innocent details are accurately described may still possess sufficient indicia of reliability to justify an investigatory stop by a law enforcement officer who does not personally observe any erratic driving." *Id.* at 729. As mentioned in section II *supra*, *Wells* involved an anonymous tip about a possibly intoxicated driver, 38 Cal.4th at 1081, and the California Supreme Court similarly determined it was not bound by *J.L.*, holding that "an anonymous and uncorroborated tip regarding a possibly intoxicated highway driver" provided an officer with the reasonable suspicion necessary to justify a stop. *Id.* at 1082.

Wheat, *Wells*, and other courts that have refused to follow the holding in *J.L.* have relied, at least in part, on the following passage from that decision:

> The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for

> example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.

529 U.S. at 273-274; see *State v. Hanning*, 296 S.W. 44, 52 (Tenn. 2009); *State v. Prendergast*, 83 P.3d 714, 718 (Haw. 2004); *State* v. *Golotta*, 837 A.2d 359, 370 (N.J. 2003); *Wheat*, 278 F.3d at 729-730; and *Wells*, 38 Cal.4th at 1085.

To state the obvious, there was no report of a person carrying a bomb in this case, or in any of the other cases, which all involved tips about reckless or drunken driving. *Hanning*, 296 S.W.2d at 46; *Prendergast*, 83 P.3d at 715-716; *Golotta* 837 A.2d at 360; *Wheat*, 278 F.3d at 724-725; and *Wells*, 38 Cal.4th at 1081. Petitioners' counsel is not aware of any decision that has lowered the requisite indicia of reliability and approved a *Terry* stop and frisk of a person who was reportedly carrying a bomb.

Instead, lower courts have seized on *J.L.*'s brief passage about a bomb as authority to establish a new, unconstitutional exception to *J.L.* and *Terry* that applies to hundreds if not thousands of traffic stops every day. There is no reason to believe that this Court, in declining to speculate about circumstances that might pose a danger significantly greater than the firearm in the case actually before it, *J.L.*, 529 U.S. at 273-274, intended to authorize "a possible public safety exception," *Wells*, 38 Cal.4th at 1085, that would completely undermine its holding.

In mentioning a report of a bomb, the Court was presumably imagining a report of a potentially cataclysmic

event such as a terrorist attack or similar activity; *e.g*, the Boston Marathon bombing. In such dire circumstances, the Court acknowledged it might be possible to relax the indicia of reliability otherwise constitutionally required by the Court's holdings. *J.L.*, 529 U.S. at 273-274; see *Wells*, 38 Cal.4th at 1091 (Werdegar, J., dissenting).

But there is nothing in those two sentences from the *J.L.* opinion to indicate that the Court surreptitiously intended to authorize an exception to its holding, and to *Terry*, that would come into play on a daily basis, throughout the country. While the dangers of drunk driving are well known to the Court, *McNeely*, 133 S. Ct. at 1565, those dangers played no role in the *J.L.* decision. There are apparently no comparable statistics about the dangers of reckless driving, yet the new "automobile exception" is so broad that anonymous reports of reckless driving are sufficient to strip drivers and passengers of their rights under *J.L.* and *Terry*.

Just before the bomb passage in *J.L.*, the Court had specifically refused to establish a "firearm exception" to *Terry*, in part out of concern that any automatic exception would be likely to spread, possibly "allowing the exception to swallow the rule." *J.L.*, 529 U.S. at 273. While recognizing the extraordinary danger posed by firearms, the Court ruled that Terry's lower level of suspicion "responds to this very concern," *id.* at 272, and explained:

> But an automatic firearm exception would rove too far. Such an exception would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an

> anonymous call falsely reporting the target's unlawful carriage of a gun. Nor could one securely confine such an exception to allegations involving firearms.

Id. at 272.

The new, automatic exception established in *Wheat*, *Wells* and other cases enables anyone with a cell phone who wants to harass another to set in motion an intrusive, embarrassing stop of the targeted person's vehicle and all of its occupants simply by placing an anonymous call falsely reporting the target might possibly be drunk. The exception is not confined to allegations involving alcohol, and already encompasses allegations of reckless driving that may not pose any ongoing risk. In those jurisdictions that have adopted it, the new exception has swallowed the constitutional rule forbidding stops of individual vehicles based on less than reasonable suspicion of criminal activity. *Cortez*, 449 U.S. at 417-418.

The new blanket exception to *J.L.* and *Terry* is also contrary to this Court's general refusal to adopt bright line, *per se* rules in evaluating reasonableness under the Fourth Amendment. *McNeely*, 133 S. Ct. at 1567-1568; *United States v. Sokolow*, 490 U.S. 1, 7 (1989). In *McNeely*, this Court refused to adopt a *per se* rule for blood testing in cases involving drunken driving, even though the dissipation of alcohol has long been accepted as a scientific certainty. *McNeely*, 133 S. Ct. at 1560-1561. Rigid rules are even less appropriate when dealing with the myriad uncertainties surrounding informants' tips, which "vary greatly in their value and reliability." *Gates*, 462 U.S. at 232. The California Court of Appeal's ruling in this

case demonstrates that the new exception is too blunt an instrument to ensure the protection of motorists' Fourth Amendment rights.

While the Court in *J.L.* made no attempt to list the various dangers that might require dilution of the Fourth Amendment's protections, it seems safe to draw at least one conclusion: the report of a single incident of reckless driving that had been over for more than twenty minutes when the officers first spotted the offending vehicle would not justify a stop on anything less than full compliance with *Terry*.

This Court should reverse the decision of the Court of Appeal.

B. None Of The Purported Distinctions Between Firearm-Related And Automobile-Related Crimes Justifies The Adoption Of A New Exception to *J.L.* and *Terry*

In addition to relying on the bomb passage to justify adoption of a new exception to *J.L.* and *Terry*, *Wheat*, *Wells* and other decisions have found various other purported grounds for distinguishing tips involving alleged reckless or drunken driving from the tip about a firearm under consideration in *J.L.* See, *e.g.*, *Wheat*, 278 F.3d at 729-738; *Wells*, 38 Cal.4th at 1087-1089. Some of these purported distinctions would be more relevant if the Court were engaging in the type of balancing that is used in cases involving checkpoints, see *City of Indianapolis v. Edmond*, 531 U.S. 32, 37-44 (2000), and none justifies a stop of an individual vehicle and its occupants without the corroboration required to establish reasonable suspicion under *J.L.* and *Terry*.

1. A Reckless Or Possibly Drunken Driver Does Not Pose A More Serious Risk To The Public Than Someone Illegally Possessing Firearms

Courts seeking to justify their adoption of the automobile exception often argue that a reckless or possibly drunken driver poses a much more serious, imminent threat to the public than does a person who is illegally possessing a firearm, as in *J.L. Wheat*, 278 F.3d at 736-737; *Wells*, 38 Cal.4th at 1087; *Boyea*, 765 A.2d at 867.

The courts typically cite no data to support this claim, which is contrary not only to the data but also to common knowledge. Firearm possession can become firearm use in a matter of seconds, *Boyea*, 765 A.2d at 881 (Johnson, J., dissenting), and recent, tragic events in Newtown, Connecticut and Oslo, Norway remind us that a single person in possession of firearms can cause far more damage than a single driver, however reckless or drunk. While many types of firearms can be concealed easily, a truly drunken driver cannot conceal his erratic driving, which is readily observable by fellow motorists as well as officers.

Turning to the data, while drunken drivers certainly pose a serious risk to the public, they are not more dangerous than firearms. The National Highway Traffic Safety Administration recently stated that 9,878 people died in alcohol-impaired driving crashes in 2011, accounting for 31% of all highway fatalities, and representing a drop of 2.5% from 2010 (10,136), and 27% from 2002 (13,472). See NHTSA, *Traffic Safety Facts, 2011 Data* 1-2 (No. 811700, Dec. 2012), cited in *McNeely*, 133 S. Ct. at 1565.

According to the Department of Justice, Bureau of Justice Statistics, preliminary data for 2011 shows 11,101 homicides by firearm, compared to 11,078 the year before, part of hundreds of thousands of violent crimes committed with firearms. See Bureau of Justice Statistics, *Firearm Violence 1993-2011* 2-3 (No. NCJ241730, May 2013). Even if there were statistics to support the courts' claims that a report of an intoxicated driver poses a more serious threat than a person illegally carrying a firearm, an anonymous tip about a reckless driver enjoys the same automatic indicia of reliability as a tip about a drunk driver under the broad new automobile exception. A driver who has, perhaps out of necessity, made a single, seemingly reckless maneuver plainly does not pose the same threat to the public as an obviously intoxicated driver unable to control a vehicle, yet the California Court of Appeal applied the exception in this case despite the absence of any suggestion that the driver had been drinking or had driven erratically during the twenty minutes preceding his seizure. A formal vehicle stop consumes far more law enforcement resources than simply following a vehicle or engaging in a consensual encounter on a sidewalk, and those scarce resources will be stretched even further if officers are required to initiate vehicle stops every time they receive a tip of drunken or reckless driving.

Finally, stopping a vehicle based on an uncorroborated anonymous tip cannot be justified by the possibility that officers would be subject to criticism for failing to stop the vehicle in the event of a subsequent crash. *Wells*, 38 Cal.4th at 1087. As the *Wells* dissent notes, the same argument could have been made in *J.L.*, "but the possibility of such criticism did not convince the high court in that case to dispense with requiring confirmation of the illegal

aspects of the anonymous tip." *Id.* at 1094 (Wedegar, J., dissenting). Illegal activities create sometimes daunting law enforcement problems, "[b]ut the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose." *Edmond*, 531 U.S. at 42.

2. Tips About Automobiles Are Neither More Reliable Nor Less Likely To Be Malicious Than Any Other Anonymous Tips

Another distinction from *J.L.* typically cited in cases justifying the adoption of the "automobile exception" is that tips about reckless or drunken driving are inherently more reliable because the tipster is more likely to have personally observed the driving, and less likely to be harassing a fellow motorist. *Wheat*, 278 F.3d at 732, 734-736; *Wells*, 38 Cal.4th at 1087; *Boyea*, 765 A.2d at 867.

But this factor varies considerably from case to case. While the tipster in *Wheat* "specifically alleged that he had personally observed several different traffic violations involving erratic driving," *Wheat*, 278 F.2d at 732, the California Supreme Court had to "reasonably infer that the tip came from a passing motorist. Where else would it have come from?" *Wells*, 38 Cal.4th at 1088. According to the dissenting justices, any claim that "the tip was from another driver or any other eyewitness is no more than conjecture." *Id.* at 1092 (Werdegar, J., dissenting). In the absence of a tipster's specific claim to have personally observed the reckless or drunken driving, the mere fact that driving is a public activity does not provide a basis for presuming personal knowledge, and this Court refused to presume that the tipster in *J.L.* had personal knowledge

about a concealed firearm. If the officer's determination of reliability is based on a presumption that is not supported by any evidence, then the officer is simply playing the type of "inchoate and unparticularized suspicion or 'hunch'" condemned in *Terry*, 392 U.S. at 27.

One early post-*J.L.* decision, *Boyea*, 765 A.2d 867, argued that a tip accurately stating which direction the vehicle was heading constituted the type of "predictive" information that this Court found necessary in *White*, 496 U.S. at 329-332, and missing in *J.L.*, 529 U.S. at 271-272. But the public nature of driving cuts both ways: passing on information available to any member of the public who happens to be in the same area as the targeted vehicle is simply not the type of predictive information based on "inside" information required to validate an anonymous tip in *J.L.* and *White*. *Harris*, 668 S.E.2d at 145-146. Even *Wheat* acknowledged that *J.L.* foreclosed this means of corroboration. *Wheat*, 278 F.3d at 733.

Wheat rejected any requirement that officers corroborate the tip's assertion of illegality – dangerous driving – as too "stringent," because the officer would then have probable cause, not just reasonable suspicion, to stop the vehicle. 278 F.3d at 733. This reasoning is not persuasive, because *J.L.* requires corroboration of the illegal assertion before the suspicion provided by an anonymous tip rises to the level of reasonable suspicion, *J.L.* 529 U.S. at 270-272, and there is nothing stringent about requiring corroborating information that is so readily available. Unlike the difficult job of verifying that J.L. possessed a concealed weapon, the task of confirming reckless or drunken driving requires only that the officer "have followed [the target vehicle] a short

distance to determine whether [the driver] was weaving or otherwise violating the traffic laws. The observation of even a small deviation, such as weaving slightly within a lane, may, when coupled with the anonymous tip, have been sufficient to justify a traffic stop." *Wells*, 38 Cal.4th at 1094 (Werdegar, J., dissenting). Corroboration may also be available from other sources, such as multiple, independent reports that a specific vehicle is being driven erratically, that would enhance the reliability of the tips.

Anonymous tips about reckless or drunken drivers could come from anywhere, which is why they pose such a danger to the rights protected by the Fourth Amendment. "If the telephone call is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity." *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring). Neither *Wheat*, 728 F.3d at 735-736, nor *Wells*, 38 Cal.4th at 1087, cites any evidentiary basis for the courts' sanguine presumptions that the harassing, false tips that concerned this Court in *J.L.*, 529 U.S. at 272, will be rare among highway travelers. *Wheat* dismisses the risk of officers themselves fabricating tips as "negligible," 278 F.3d at 735-736, but as the Missouri Supreme Court recently noted, "the mere fact that information came through a police dispatch does not provide a basis for finding reasonable suspicion, for if it did, 'the requirements of reasonable suspicion and probable cause would be rendered meaningless' because 'police could simply filter a "hunch" through a radio dispatch or cellular phone and have it come out reliable on the other end.' [Citation]." *State v. Grayson*, 336 S.W.3d 138, 144 (Mo. 2011).

Addressing the risk of false, malicious tips from citizens, some courts have suggested that the short

amount of time available to call in a report about erratic driving, as opposed to crimes like possession of firearms or drugs, makes fabrication unlikely. *Hanning*, 296 S.W.2d at 51; *Bloomingdale v. State*, 842 A.2d 1212, 1220 (Del. 2004). But at least one person in virtually every car now on this nation's roadways has a cellular phone, some prepaid and therefore untraceable, making instant anonymous tips available to almost everyone caught up in road rage. There is absolutely no reason to confer presumptive reliability on anyone reporting erratic driving.

If anything, people tend to act more aggressively toward their fellow motorists from the safety and anonymity of their cars than they would if they were meeting on the sidewalk. On the road, anyone angered by the driver or passengers in another car can get immediate revenge by placing a quick call to the authorities. Safety concerns that sometimes prompt requests for anonymity in other types of tips are usually absent when the tip involves erratic driving, where the motive will at best be a desire not to be involved, and at worst a desire to harass someone with impunity. Even if the tip is false and the caller's phone automatically identified, the tipster runs virtually no risk of prosecution because of the difficulty of establishing that the assertion of erratic driving was false, unlike the situation in *Adams*, where the veracity of a tip about gun possession could be established immediately and the known informant held responsible if it turned out to be false. *Adams*, 407 U.S. at 147-148.

The effect of granting an automatic exception to *J.L.* and *Terry* to every tip about erratic driving is "to turn over to anyone with a telephone the power to make the government intrude into a private citizen's life without any

oversight or control." *Boyea*, 765 A.2d 862, 882 (Johnson, J., dissenting). This is exactly why this Court rejected the "firearm exception" in *J.L.*, 529 U.S. at 272-273, and in order to protect the Fourth Amendment rights of this country's motorists, this Court should also reject this new exception to *J.L.* and *Terry*. "The mere fact that a tip, if true, would describe illegal activity does not mean that the police may make a *Terry* stop without meeting the reliability rquirements." *J.L.*, 529 U.S. at 273, n.*.

3. Stopping A Pedestrian Is No More Intrusive Than Stopping A Vehicle And Detaining Its Occupants, Who Enjoy The Same Fourth Amendment Rights As Pedestrians

The courts also argue that automobile-related tips should be treated differently from other anonymous tips because stopping a vehicle and detaining its occupants is less intrusive than the frisk of J.L., and those occupants have reduced privacy interests due to governmental regulation of automobiles. *Wheat*, 278 F.3d at 737; *Wells*, 38 Cal.4th at 1087; *Boyea*, 765 A.2d at 868.

The first part of this claim is based on a misreading of *J.L.*, because this Court stated clearly its holding was not based on the intrusiveness of a *Terry* frisk, and "in no way diminishes a police officer's prerogative, in accord with *Terry*, to conduct a protective search of a person who has already been legitimately stopped. We speak in today's decision only of cases in which the officer's authority to make the initial stop is at issue." *J.L.*, 529 U.S. at 274. Just like pedestrians legitimately stopped on a sidewalk, both the driver of a legitimately stopped

vehicle, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), and its passengers, *Arizona v. Johnson*, 555 U.S. 323 (2008), are subject to a *Terry* patdown search if the officer has reasonable suspicion that they are armed and dangerous.

The intrusion at issue is the initial detention, not whatever happens afterward, and vehicle stops are no less intrusive than stops on the sidewalk. In *Prouse*, this Court described automobile travel as "basic, pervasive and often necessary," and noted that many people probably "find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel." *Prouse*, 440 U.S. at 662. The intrusion in *Wells*, where "a woman alone in her car, was stopped by police on a deserted highway at nearly 2:00 in the morning," was certainly not insignificant. *Wells*, 38 Cal.4th at 1093 (Werdegar, J., dissenting).

While it is certainly true that "when it comes to the Fourth Amendment, the home is first among equals," *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013), *Terry* recognized that "people are not shorn of all Fourth Amendment protections when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles." *Prouse*, 440 U.S. at 663. A stop of a vehicle and its occupants must be based on articulable and reasonable suspicion of unlawful conduct, because:

> An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation.... Were the individual subject to

> unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.

Id. at 662-663.

IV. This Court Should Hold That There Is No "Automobile Exception" To *J.L.* And *Terry*

The answer to the question posed by the grant of certiorari, "Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?" is yes. When the officer's suspicions are based, not on the officer's own observations "but solely from a call made from an unknown location by an unknown caller," *J.L.* 529 U.S. at 270, the Fourth Amendment requires corroboration of the dangerous driving itself, not just of the innocent details. 529 U.S. at 270-274.

Bare assertions of reckless driving, like the one the officer in this case said he received, JA 48a–49a, 57a, provide the lowest indicia of reliability, and simply do not give officers reasonable suspicion for a stop unless the officers can corroborate reckless driving. While additional information about the informant's observations can increase the reliability of the tip, as long as the information is coming from a truly anonymous source who could simply be fabricating the scenario, however detailed, the tip cannot rise to the level of reasonable suspicion without corroboration. Fortunately, the asserted illegality is being carried out on a public roadway, making it quite easy for officers to corroborate the tip, if true.

In holding that the Fourth Amendment does not require officers to take this simple step before seizing a vehicle and all of its occupants, courts applying the new "automobile exception" essentially ignore the serious concerns this Court raised about false, anonymous tips in its unanimous *J.L.* decision. There is no evidentiary or logical basis to presume that anonymous tips about dangerous driving are any more reliable than anonymous tips about anything else, including firearms. Given the prevalence of road rage and the ubiquity of cell phones, false tips about other motorists are if anything likely to occur more frequently than other types of malicious tips.

All of the compelling reasons this Court gave for rejecting the automatic "firearm exception" support its rejection of this new automatic exception, which has already effectively swallowed the rule requiring reasonable suspicion for vehicle stops in the jurisdictions that have adopted it. *J.L.*, 529 U.S. at 273.[10] Firearms and erratic driving both pose risks to the public, but *Terry*'s requirement of only reasonable suspicion for detentions "responds to this very concern." *Id.* at 272.

Public safety does not require, in addition, that this country's drivers and passengers – in other words, its citizens – be subject to intrusive, embarrassing seizures based on nothing more than another person's malicious desire to harass them by calling in a false report of dangerous driving. *Id.* Such an easily abused exception

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10. As the Court predicted in *J.L.*, 529 U.S. at 273, the exception has not been confined to automobiles; there is also an "emergency exception" to *J.L.* See *United States v. Hicks*, 531 F.3d 555, 558-559 (7th Cir. 2008).

could seriously erode the public's confidence in law enforcement, as one prominent scholar argues. See Sherry F. Colb, *Anonymous Tips, Risks, and Type 1 Errors*, Dorf on Law (2013), http://www.dorfonlaw.org/2013/10/anonymous-tips-risks-and-type-1-errors.html (last visited November 11, 2013). The result will be officers routinely seizing vehicles and their occupants based entirely on false tips from harassers who risk nothing, because the targeted drivers cannot disprove the false allegations.

The Fourth Amendment was adopted to prevent such abuses, and this Court's precedents provide an efficient solution to the problem. Requiring officers to corroborate a tip's assertion of dangerous driving before detaining a vehicle and its occupants will simultaneously protect their right to be free from unreasonable searches and seizures, while ensuring that officers can quickly seize any actual reckless or drunk drivers.

The Fourth Amendment "is designed not to collapse at the cry of 'public safety' but to hold the government to the requirement of reasonableness even when the government argues it is acting for public safety.... [I]f danger becomes a justification for dispensing with the requirement of reliability, then there will be nothing left of the Fourth Amendment." *Boyea*, 765 A.2d at 885 (Johnson, J., dissenting).

As this Court has stated:

> "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."

Terry, 392 U.S. at 9, quoting *Union Pacific Railroad Company v. Botsford*, 141 U.S. 250, 251 (1891).

That right is in peril if an officer can constitutionally pull over individual vehicles based on nothing but an anonymous assertion of reckless or drunken driving that the officer need not corroborate.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the California Court of Appeal.

Respectfully submitted,

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RESPONDENT'S BRIEF

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In The Supreme Court of the United States

LORENZO PRADO NAVARETTE and
JOSE PRADO NAVARETTE,

Petitioners,

v.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

RESPONDENT'S BRIEF ON THE MERITS

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QUESTION PRESENTED

Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

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STATEMENT OF THE CASE

1. Matia Moore and Sharon Odbert worked as a dispatch team in the California Highway Patrol (CHP) 911 call center in Mendocino County. J.A. 20a-22a, 34a-35a.

On August 23, 2008, at 3:47 p.m., Ms. Moore received a call on an internal "allied" CHP dispatch phone line from a CHP 911 dispatcher in Humboldt County. J.A. 20a, 25a-28a, 35a, 42a. The Humboldt 911 dispatcher explained to Ms. Moore that she had received a 911 call from a citizen who reported being run off the road by a reckless driver. According to the Humboldt dispatcher, the 911 caller described the perpetrator's vehicle as a silver Ford F-150 pickup truck, with license plate number 8D94925. J.A. 25a-30a. The incident happened on Highway 1 near mile marker 88, and the truck was traveling south. J.A. 25a, 30a-37a. The Humboldt dispatcher did not relate the identity of the caller. J.A. 25a-27a, 32a, 45a.[1]

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[1] It appears that the 911 call to the Humboldt dispatcher was recorded and may have included the name of the caller. J.A. 18a-19a. However, because the prosecutor did not realize prior to the suppression hearing that the call initially went to the Humboldt County call center before being reported to the Mendocino County dispatcher, she failed to subpoena the Humboldt dispatcher and could not offer the recorded 911 call at the hearing. J.A. 18a-19a, 64a-65a. Consequently, the magistrate and parties properly treated the call as anonymous, J.A. 65a-74a, as did the superior court, Pet. a26-a34, and the appellate court, Pet. a1-a25. See, *e.g.*, *United States* v. *Holloway*, 290 F.3d 1331, 1339 n.5 (11th Cir. 2002).

As Ms. Moore received the report, she typed the information into her computer, which simultaneously displayed the information on her partner's computer and recorded it in a dispatch log. The entry stated: "Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five ago [sic]." J.A. 36a; see also J.A. 24a-26a.

Ms. Odbert promptly broadcast to coastal CHP units to be on the lookout for a California Vehicle Code section 23103 reckless driver who had run the reporting party off the roadway. The broadcast included the truck's description, license plate number, location, and direction of travel. J.A. 35a-37a; Pet. a20-a23.

Two CHP units responded to the broadcast and reported that they were en route from the nearby city of Fort Bragg, heading north. J.A. 37a-38a, 48a-49a. At 4:00 p.m., Sergeant Francis reported that he had passed the truck near mile marker 69. J.A. 39a, 42a, 46a. Officer Williams, who had been trailing Sergeant Francis, spotted the truck near mile marker 66 and saw Sergeant Francis following it. Officer Williams let them pass, made a U-turn, and then followed them. J.A. 49a-51a. Around 4:05 p.m., Sergeant Francis pulled the vehicle over and, soon thereafter, Officer Williams pulled up behind them. J.A. 46a, 51a.

The officers approached the truck on the passenger side and asked the occupants (petitioners) for identification; they then returned to Sergeant Francis's patrol car to run identification checks. J.A. 51a-52a. The driver, Lorenzo Navarette, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. J.A. 52a-53a, 62a-63a. From this location, they noticed the distinct odor of marijuana emanating from the truck and ordered petitioners to exit the vehicle. J.A. 53a-54a, 64a. A search of the truck disclosed four large bags containing over thirty pounds of marijuana in the enclosed truck bed, along with fertilizer, pruning shears, and oven bags for packaging. J.A. 55a; Pet. a5.

2. The Mendocino County District Attorney filed an information charging petitioners with transportation of marijuana and possession of marijuana for sale. Cal. Health & Safety Code §§ 11359, 11360(a); J.A. 14a-16a.

At the preliminary hearing, petitioners moved to suppress evidence seized following the stop and search of the truck, contending the anonymous report was not sufficiently reliable to provide reasonable suspicion for the stop. The magistrate denied the motion, finding that the stop was justified because the details of the report were sufficiently corroborated and the potential threat to public safety was substantial. J.A. 68a-74a. Petitioners moved to set aside the charges in superior court, arguing that the magistrate had erred. J.A. 2a-4a, 6a-7a. The superior court

agreed with the magistrate's ruling and denied the motion. Pet. a26-a37.

Petitioners then pleaded guilty to transportation of marijuana, Cal. Health & Safety Code § 11360(a). J.A. 4a, 7a. They were placed on probation for three years and ordered to serve 90 days in county jail. *Id.*; Pet. a7.

3. On appeal, petitioners renewed their challenge to the denial of the suppression motion. See Cal. Penal Code § 1538.5(m). The First District Court of Appeal rejected their claim and affirmed the judgment. Pet. a1-a25. The court explained that the contents of the tip "supported an inference that it came from the victim of the reported reckless driving," "the officers' prompt corroboration of significant innocent details of the tip . . . sufficiently established the reliability of the tip to support reasonable suspicion," and "the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists" justifying the stop without direct corroboration of illegal activity. Pet. a18. The court denied a petition for rehearing. Pet. a39.

The California Supreme Court denied review. Pet. a38.

SUMMARY OF ARGUMENT

Because of the heightened governmental interest in protecting public safety, the Fourth Amendment

permits an officer to stop a driver based on a 911 call from an unidentified citizen informant reporting personal observation of drunk or reckless driving and providing a detailed description of the vehicle, its location, and its direction of travel, even though officers corroborate only the innocent details of the tip.

1. The proper approach for evaluating reasonable suspicion based on an anonymous tip is no different than that used in any other context—courts must consider the totality of the circumstances. *Alabama* v. *White*, 496 U.S. 325, 328-32 (1990). The three main factors relevant to whether an anonymous tip supplies reasonable suspicion are veracity, reliability, and basis of knowledge, with no single factor determinative. *Id.*

The nature of the anonymous tip, however, is not the only consideration in the balance. *Terry* v. *Ohio*, 392 U.S. 1, 20-21 (1968), explained that the first step in evaluating reasonable suspicion is balancing the strength of the governmental interest against the degree of the intrusion of the stop. Thus, the totality of the circumstances necessarily includes not only the quality of the information in an anonymous tip and its reliability, but also the nature and immediacy of the threat to public safety flowing from the described illegal activity.

When presented with an immediate threat to public safety, officers and courts may properly find reasonable suspicion from an anonymous tip without corroborating criminal conduct. Here, the California

Court of Appeal recognized that the grave threat to public safety posed by a drunk or reckless driver must be considered in the balancing calculus. In so doing, the court was not creating a new exception to the Fourth Amendment, as posited by petitioners. To the contrary, the court properly applied the traditional balancing-of-interests approach required by *Terry*, but which is notably absent from petitioners' analysis. Given the importance of the governmental interest, the state court correctly concluded that the anonymous 911 call—reporting that petitioners' truck had run the caller off the highway and providing substantial detailed information, including a vehicle description, license plate number, time of the incident, location, and direction of travel—provided officers with reasonable suspicion for a detention, without requiring corroboration of more than the innocent details.

2. Petitioners misread *Florida* v. *J.L.*, 529 U.S. 266 (2000), as establishing an inflexible reliability test for anonymous tips, under which officers must corroborate the tip's "assertion of illegality" before an officer may rely on the tip as providing reasonable suspicion for a stop. In *J.L.*, however, the Court held only that an anonymous tip reporting that a particular individual at a bus stop was in possession of a gun, but that otherwise lacked indicia of reliability or any reported basis of knowledge, was not sufficient to support reasonable suspicion absent corroboration of illegality. In reaching this conclusion, the Court recognized that the balancing would likely be different if

the reported offense implicated the stronger governmental interest of protecting public safety, for example if the reported crime were of someone carrying a bomb. *Id.* at 273-74.

Petitioners acknowledge the passage in *J.L.* limiting its holding to the circumstances of an anonymous report of possession of a gun and declining to consider how a case would be resolved if the anonymously reported threat to public safety were greater. Petitioners, however, posit that the Court's statement refers only to some "potentially cataclysmic event such as a terrorist attack or similar activity," like "the Boston Marathon bombing," in which case the "dire circumstances" might allow for a relaxing of the strictures of the Fourth Amendment. Pet'rs Br. 26-27. Thus, petitioners would require that officers, when confronted with an anonymous report of a drunk driver on the roadway, trail the reported drunk driver and wait to observe evidence of intoxication, such as swerving (potentially into oncoming traffic), before acting on the tip. In practical effect, petitioners would discount any consideration of the strength of the governmental interest except in the most extraordinary situations.

Petitioners' contention that a mandatory corroboration-of-illegality test applies to all anonymous tips is flawed in two key respects. First, it ignores that the importance of the governmental interest has always been an integral component of the balancing for reasonable suspicion under *Terry*. Second, it envisions an anachronistic return to a

categorical approach for analyzing anonymous tips that was expressly rejected by the Court in *Illinois* v. *Gates*, 462 U.S. 213 (1983).

Contrary to petitioners' claim, the proper method for evaluating reasonable suspicion based on an anonymous tip is the same as for evaluating reasonable suspicion in any other context. Courts must consider the totality of the circumstances, which necessarily includes the strength of the governmental interest in protecting public safety, to determine whether the balance of competing interests favors the action taken.

The alternative propounded by petitioners, requiring officers to trail a suspected drunk driver and wait to personally observe evidence of intoxication, poses too great a risk to public safety. The state court correctly rejected petitioners' suggested approach as contrary to the very purpose of the type of investigative detention authorized by *Terry*—permitting the minor inconvenience of a traffic stop to resolve ambiguity before potentially fatal consequences are realized.

Petitioners' categorical approach should be rejected and the decision of the California Court of Appeal should be affirmed.

ARGUMENT

AN ANONYMOUS 911 CALL REPORTING PERSONAL OBSERVATION OF DRUNK OR RECKLESS DRIVING AND GIVING A DETAILED DESCRIPTION OF THE VEHICLE, ITS LOCATION, AND ITS DIRECTION OF TRAVEL PROVIDES REASONABLE SUSPICION FOR AN INVESTIGATIVE DETENTION, EVEN THOUGH OFFICERS CORROBORATE ONLY INNOCENT DETAILS OF THE TIP

Petitioners contend that the California appellate court's decision, finding reasonable suspicion to stop their vehicle based on a detailed anonymous tip reporting reckless driving, violated a fixed rule set out in *J.L.*, 529 U.S. 266. Petitioners read *J.L.* as propounding a mandatory requirement of corroboration of illegality for all anonymous tips, regardless of the threat to public safety. Pet'rs Br. 20. Such a bright-line rule would run contrary to the balancing approach the Court has consistently applied in gauging reasonable suspicion since *Terry* first articulated the doctrine. Critically, petitioners' approach fails to acknowledge that the importance of the governmental interest is an integral part of the balancing for evaluating reasonable suspicion under *Terry*.

The state court correctly declined petitioners' categorical approach and looked instead to the totality of the circumstances in conducting its reasonableness balancing. The court weighed the quantity and quality of the information contained in the tip, the degree of corroboration of the details, the reported basis of knowledge of the 911 caller, and the heightened need

to protect the public from a possible drunk driver on the road, and properly concluded reasonable suspicion supported the investigatory detention.

A. The Importance of the Governmental Interest Is an Indispensable Component of Reasonableness Balancing

An officer may detain a motorist on reasonable suspicion that the driver has violated the law. *Ornelas* v. *United States*, 517 U.S. 690, 693 (1996). Reasonable suspicion requires "a particularized and objective basis for suspecting the person stopped of criminal activity." *United States* v. *Cortez*, 449 U.S. 411, 417-18 (1981). While this standard does not permit a detention based on an officer's inchoate suspicion or subjective hunch, *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989), all that is required is "some minimal level of objective justification to validate the detention or seizure," *INS* v. *Delgado*, 466 U.S. 210, 217 (1984).

The reasonable-suspicion standard originated with *Terry*, in which the Court stated that an officer may conduct an investigative detention without probable cause when the objective circumstances lead the officer "reasonably to conclude in light of [the officer's] experience that criminal activity may be afoot." *Terry*, 392 U.S. at 30. The Court noted that this standard derived naturally from the "central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular

governmental invasion of a citizen's personal security." *Id.* at 19.

The Court explained that, in assessing the constitutionality of the officer's conduct,

> it is necessary "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails."

Id. at 20-21 (alterations added by *Terry*) (quoting *Camara* v. *Municipal Court*, 387 U.S. 523, 534-35, 536-37 (1967)).

The Court in *Terry* identified two important governmental interests that weighed in favor of the dual intrusion of a stop followed by a frisk. It pointed first to the general governmental interest in "effective crime prevention and detection," which warranted an investigative detention. *Id.* at 22. Second "is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." *Id.* at 23. The greater importance of this second governmental interest of officer safety weighed in favor of the incrementally more intrusive step of frisking the suspect for weapons. *Id.* at 23. Thus, from its very inception, the Court's reasonable-suspicion jurisprudence has

factored the importance of the governmental interest into the calculus of the reasonableness balancing.

B. The Cases Evaluating the Sufficiency of Anonymous Tips Have Consistently Looked to the Totality of the Circumstances Confronting the Officer, Which, as *J.L.* Reaffirmed, Includes the Nature of the Reported Offense and the Importance of the Governmental Interest

The Court's anonymous-tip jurisprudence developed through a series of cases involving the ordinary governmental interest of preventing and detecting possession of guns or drugs. In evaluating the sufficiency of an anonymous tip under the totality of the circumstances in those cases, the Court considered the degree to which the tip demonstrated the informant's veracity, reliability, and basis of knowledge. When the tip provided little or no information about one or two of these factors, the Court required a greater showing as to the remaining factor or factors. Thus, if the tip did not reveal a basis of knowledge or demonstrate veracity, the Court looked to either the tip's predictive information or corroboration of the reported illegality. The one factor the cases were not called upon to evaluate was the effect of a heightened governmental interest on the *Terry* balancing. In *J.L.*, however, the Court recognized that a stronger governmental interest would alter the balance and require a less demanding showing of the reliability of an anonymous tip to supply reasonable suspicion.

1. The Court first recognized that an informant's tip may supply an officer with reasonable suspicion, even when the officer does not personally observe any possible wrongdoing, in *Adams* v. *Williams*, 407 U.S. 143, 147 (1972). *Adams* held that an officer had reasonable suspicion to conduct a *Terry* stop and frisk when a person known to the officer approached and reported that a man sitting in a nearby car was carrying narcotics and a gun. *Id.* at 144-47. The Court rejected the suggestion that a stop and frisk must be based on an officer's personal observations alone. *Id.* at 147.

Although *Adams* involved a known informant, and was thus a "stronger case" than one involving an anonymous tip, *id.* at 146, the Court observed that "[o]ne simple rule will not cover every situation," *id.* at 147. *Adams* recognized that "[i]nformants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability," and each must be evaluated under the totality of the attendant circumstances. *Id.*

> Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule

> should not thwart an appropriate police response.

Id.

2. In *Illinois* v. *Gates*, 462 U.S. 213 (1983), the Court considered how anonymous tips are to be evaluated when offered as the foundation for finding probable cause for a warrant. The Court rejected application of a rigid, two-pronged test, derived from *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), which would have required independent evaluations of the anonymous informant's basis of knowledge and his reliability and veracity. *Gates*, 462 U.S. at 230. Instead, the Court reaffirmed that an anonymous informant's tip is properly evaluated under a "totality-of-the-circumstances approach." *Id.* Reliability, veracity, and basis of knowledge are "understood as relevant considerations in the totality-of-the-circumstances analysis," but no single factor is determinative. *Id.* at 233.

Applying this standard, *Gates* found sufficient probable cause to support a warrant based on an anonymous letter to the police. The letter implicated a husband and wife in narcotics trafficking and predicted a travel itinerary involving a short round trip from Illinois to Florida, which turned out largely to be accurate. Even though the police were able to corroborate only innocent activity, *id.* at 243 n.13, the Court held that the totality of the circumstances established probable cause to support the warrant.

3. *Alabama* v. *White*, 496 U.S. 325 (1990), applied the reasoning of *Gates* to an anonymous tip in the reasonable suspicion context. The Court noted that the factors identified in *Gates*—the informant's veracity, reliability, and basis of knowledge—"are also relevant in the reasonable-suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard." *Id.* at 328-29.

White observed that an anonymous tip will seldom demonstrate the informant's "basis of knowledge" because "ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations." *Id.* at 329. Moreover, the veracity of an anonymous informant is "'by hypothesis largely unknown, and unknowable.'" *Id.* (quoting *Gates*, 462 U.S. at 237). In the absence of information regarding these two factors, the Court looked to the degree that corroboration of predictive details of the tip demonstrated its reliability, while emphasizing that a lesser showing was necessary to support reasonable suspicion.

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Adams* v. *Williams*, *supra*, demonstrates as much.

> We there assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but nevertheless found it sufficiently reliable to justify a *Terry* stop.

Id. at 330.

In *White*, officers received an anonymous phone call reporting that Vanessa White would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with a broken right taillight lens, that she would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine inside a brown attaché case. *Id.* at 327. Officers went to the apartment complex and observed a woman leave the 235 building empty-handed, get into a vehicle matching the description given, and drive along a direct route leading to Dobey's Motel. Officers followed and stopped her just shy of the motel. During a consensual search of the vehicle, officers located a brown attaché case filled with marijuana, and later found three milligrams of cocaine in White's purse. *Id.*

White found the anonymous call sufficient to support reasonable suspicion. As with the tip in *Gates*, the caller did not identify his or her basis of knowledge and the caller's veracity was unknown. *Id.* at 329. Consequently, *White* focused on whether the amount of detail and degree of corroboration of the tip were sufficient to establish its reliability. The Court acknowledged that several details were not

corroborated prior to the stop, including the woman's name, the actual apartment she left from, and her precise destination. *Id.* at 331-32. Officers also did not confirm the presence of the attaché case in the vehicle until after the stop. *Id.* at 327. However, the Court observed that officers were able to confirm some information predictive of future action—the time of the woman's departure and likely destination—allowing the officers to infer that the caller was not only honest, but had a basis of knowledge demonstrating "inside information." Under the totality of circumstances, the officers had reasonable suspicion of wrongdoing. *Id.* at 332.

4. The Court again considered the sufficiency of an anonymous tip in *J.L.*, 529 U.S. 266, this time finding the tip insufficient to support reasonable suspicion. The police in *J.L.* received an anonymous tip that a young Black male, standing at a particular bus stop and wearing a plaid shirt, was carrying a gun. *Id.* at 268. Officers went to the location and spotted J.L., who matched the physical description given. Acting solely on the tip, the officers detained and frisked J.L. and found a gun in his pocket. *Id.*

The Court deemed the tip inadequate to establish reasonable suspicion under the totality of the circumstances. *J.L.* concluded that the "bare report," made by "an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [the suspect]," lacked even the "moderate indicia of reliability present in *White*," and did not

provide reasonable suspicion justifying a *Terry* stop. *Id.* at 271. *J.L.* rejected the state's argument that firearms were sufficiently dangerous in and of themselves to justify dispensing with the requirement of reliability shown through corroboration of illegality. *Id.* at 272-73.

The Court, however, carefully limited *J.L.*'s holding to the specific circumstances, namely an anonymous report of a possessory gun offense. It held only "that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *White* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm." *Id.* at 274. The Court added,

> The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.

Id. at 273-74.

Although *J.L.* rejected the sufficiency of the tip in the context of routine crime prevention, it recognized that a heightened governmental interest, arising from an imminent threat to public safety, is an important factor in evaluating the totality of circumstances, which, in turn, affects the overall balancing

of reasonableness. Thus, the stronger the governmental interest, the less demanding a showing of reliability is required for an anonymous tip to provide reasonable suspicion.

C. The Heightened Governmental Interest of Protecting the Public from the Threat of Imminent Harm from Drunk or Reckless Drivers Weighs Heavily in the Reasonableness Balance and Tips the Scale in Support of Finding Reasonable Suspicion Based on a Detailed Anonymous Report Without Corroboration of Illegality

Following *J.L.*, California, like many jurisdictions, recognized the qualitative difference between possessory offenses and those offenses posing an immediate grave risk to public safety, such as drunk driving, in evaluating the degree of corroboration required to justify a detention.[2] For the latter class of offenses,

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[2] *United States* v. *Wheat*, 278 F.3d 722, 730-37 (8th Cir. 2001); *Bloomingdale* v. *State*, 842 A.2d 1212, 1217-22 (Del. 2004); *State* v. *Prendergast*, 83 P.3d 714, 721-24 (Haw. 2004); *State* v. *Walshire*, 634 N.W.2d 625, 626-30 (Iowa 2001); *State* v. *Crawford*, 67 P.3d 115, 119-20 (Kan. 2003); *State* v. *Vaughan*, 974 A.2d 930, 934 (Me. 2009); *State* v. *Sousa*, 855 A.2d 1284, 1288 (N.H. 2004); *State* v. *Golotta*, 837 A.2d 359, 366-73 (N.J. 2003); *State* v. *Scholl*, 684 N.W.2d 83, 89 (S.D. 2004); *State* v. *Hanning*, 296 S.W.3d 44, 49-53 (Tenn. 2009); *State* v. *Boyea*, 765 A.2d 862, 866-68 (Vt. 2000); *State* v. *Rutzinski*, 623 N.W.2d 516, 523-28 (Wis. 2001); see also *Cottrell* v. *State*, 971 So. 2d 735, 745-46 (Ala. Crim. App. 2006); *State* v. *Torelli*, 931 A.2d 337, 343-45 (Conn. App. Ct. 2007); *People* v. *Shafer*, 868 N.E.2d 359, 362-67

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the absence of corroboration of the illegal conduct identified by the anonymous tipster may often be outweighed by the inherent danger of the conduct itself.

1. In *People* v. *Wells*, 38 Cal. 4th 1078, 1081, 136 P.3d 810 (2006), for example, the California Supreme Court concluded that an anonymous phone tip reporting a possibly intoxicated driver in a vehicle "weaving all over the roadway" and accurately describing the vehicle and its location was sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, were able to corroborate only the innocent details of the tip. *Wells* found support in *Wheat*, 278 F.3d 722, as well as numerous cases from other jurisdictions that had reached a similar conclusion. *Wells*, 38 Cal. 4th at 1084-85.

Wells recognized that, because of the importance of the governmental interest, anonymous reports of erratic or drunk driving may provide reasonable suspicion justifying a traffic stop when supported by several considerations that demonstrate reliability and basis of knowledge, even without corroboration of illegal conduct. "First, the tipster must furnish

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(Ill. App. Ct. 2007); *State* v. *Barras*, 20 So. 3d 1100, 1104-05 (La. Ct. App. 2009); *State* v. *Contreras*, 79 P.3d 1111, 1117-18 (N.M. Ct. App. 2003); *People* v. *Jeffery*, 769 N.Y.S.2d 675, 675 (N.Y. App. Div. 2003); cf. *United States* v. *Whitaker*, 546 F.3d 902, 908-11 (7th Cir. 2008) (noting reduced corroboration requirement for stop based on anonymous 911 call reporting an "ongoing emergency," and listing cases); *People* v. *Dolly*, 40 Cal. 4th 458, 465-71, 150 P.3d 693 (2007).

sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller." *Id.* at 1086. "Second, the tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity." *Id.* "[T]hird, at least the 'innocent details' of the tip must be corroborated by the officers." *Id.*

Wells agreed with *Wheat* that "in the context of reckless and possibly intoxicated driving, the tip's lack of 'predictive information' was not critical to determining its reliability. Such an analysis is more appropriate in cases involving tips of concealed criminal behavior such as possession offenses." *Id.* at 1086 (citation omitted); see also *Wheat*, 278 F.3d at 730.

> "[I]n contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that."

Wells, 38 Cal. 4th at 1086 (quoting *Boyea*, 765 A.2d at 867).

Wells further explained that "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." *Id.* at 1087. Moreover, a relatively precise and accurate description of the vehicle type, color, location, and direction of travel, when promptly confirmed by an investigating officer, enhances the reliability of a tip. *Id.* at 1088. *Wells* added that "[t]he investigating officer's inability to detect any erratic driving on defendant's part is not significant. Motorists who see a patrol car may be able to exercise increased caution." *Id.*

2. *Wells* correctly concluded that, in addition to presenting a weightier governmental interest, an anonymous 911 report of a drunk driver typically differs from an informant's report of a possessory offense with respect to assessing the relevant factors identified in *Gates*. These differences, though subtle, are sufficient to alter the other side of the equation by readjusting the balancing of the *Gates* factors in favor of reasonable suspicion.

For example, in *White* and *J.L.*, the anonymous tips provided no information as to two of the three factors *Gates* identified as relevant. In neither case did the anonymous caller tell the authorities the basis for his or her knowledge of the reported offense,

nor could the police point to any external factors that could demonstrate the caller's veracity. Thus, corroboration of the tip had to serve triple duty, as establishing reliability and, by inference, showing veracity and basis of knowledge. Consequently, the Court required more than just corroboration of innocent details. By contrast, anonymous 911 reports of drunk drivers typically will provide direct information about the caller's basis of knowledge. Unlike the secretive tips in *J.L.* and *White*, 911 callers reporting drunk or reckless driving are relating their direct observations to the authorities.

Moreover, in both *White* and *J.L.*, the reported offenses involved "concealed criminal activity," *J.L.*, 529 U.S. at 272. The Court therefore looked to "inside information—a special familiarity with respondent's affairs," *White*, 496 U.S. at 332, as demonstrating the tips' reliability. Such special familiarity would most obviously be demonstrated by predicting future behavior. This consideration, however, does not apply to tips about open criminal behavior committed in front of strangers.

Accordingly, a detailed anonymous 911 call reporting personal observations of a drunk or reckless driver on the highway presents a qualitatively different set of considerations under *Gates* and must be evaluated under its own facts. These differences, when combined with the weightier governmental interest, further add to the balance in favor of finding reasonable suspicion.

3. In sum, *Wells* and similar cases from other states are correct in concluding that an anonymous 911 call reporting the caller's personal observation of drunk or reckless driving and providing a detailed description of the vehicle, its location, and direction of travel, is sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, are able to corroborate only the innocent details of the tip. These cases properly recognize that reasonable suspicion is evaluated by balancing the totality of the circumstances, including consideration of the importance of the governmental interest, which is markedly stronger when officers are confronted with a drunk or reckless driver on the road. Having received a tip from an anonymous 911 call reporting an ongoing threat to public safety and providing a basis of knowledge, officers may rely on confirmation of the innocent details of the call to provide reasonable suspicion for an investigative detention. They need not wait for further confirmation of illegality, particularly when additional confirmation could come at the price of injury or death to innocent motorists and pedestrians.

4. Petitioners take issue with the *Wells* analysis, repeatedly accusing California and its sister states of adopting an automatic "automobile exception" lacking in constitutional support. Pet'rs Br. 9, 10, 12, 24, 25, 27, 30, 31, 32, 38, 39. Petitioners' attack is directed at a straw man. No court permitting an investigative

detention of a drunk driver has done so by invoking any such automobile exception.[3] To the contrary, California, like other jurisdictions, has consistently undertaken a balancing of all relevant factors, which necessarily includes the heightened governmental interest of protecting the public from a threat of imminent harm.

Petitioners are incorrect in asserting that the Fourth Amendment requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle. Reasonable suspicion is evaluated under the totality of the circumstances, including the importance of the governmental interest at stake. When the threat to public safety is substantial and immediate—as it is with reported drunk or reckless driving—officers may rely on a detailed anonymous tip, corroborated in all other respects, as providing reasonable suspicion to detain, without the need to also corroborate the illegality.

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[3] A lone dissenting opinion is the only evidence petitioners marshal to support the claim that states are relying on an automatic "automobile exception." Pet'rs Br. 12 n.3 (citing *Boyea*, 765 A.2d at 877 (Johnson, J., dissenting)). Notably, the majority and concurring opinions in *Boyea* rejected this characterization and took pains to explain that the decision was based on a balancing of all factors relevant to evaluating the reasonableness of the stop. See *id.* at 405-10 (majority); *id.* at 420-21 (Skoglund, J., concurring).

D. Petitioners' Mandatory Corroboration-of-Illegality Test Misreads the Holding in *J.L.* and Is Contrary to *Terry*

1. The central defect underlying petitioners' entire thesis is their failure to acknowledge that the heightened governmental interest in protecting the public is an integral component of the balancing of interests. Petitioners attempt to minimize *J.L.*'s acknowledgement that the balancing of interests would be different for a report of a bomb by retorting that they are "not aware of any decision that has lowered the requisite indicia of reliability and approved a *Terry* stop and frisk of a person who was reportedly carrying a bomb." Pet'rs Br. 26. They add that, apart from a report of a "potentially cataclysmic event such as a terrorist attack," *J.L.* cannot be read as authorizing a public safety exception "that would completely undermine its holding." *Id.* at 26-27.

Petitioners' attempt to characterize the governmental interest in public safety as an exception to the general rule misses the point entirely. The significance of the governmental interest is baked into the test and cannot be ignored or diminished. Indeed, the importance of the governmental interest has been an essential component of Fourth Amendment balancing since the creation of the reasonable-suspicion doctrine. *Terry*, 392 U.S. at 20-22.

As stated in *United States* v. *Place*, 462 U.S. 696, 703 (1983),

> The exception to the probable-cause requirement for limited seizures of the person recognized in *Terry* and its progeny rests on a balancing of the competing interests to determine the reasonableness of the type of seizure involved within the meaning of "the Fourth Amendment's general proscription against unreasonable searches and seizures." 392 U.S., at 20. We must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.

See also *Hiibel* v. *Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 187-88 (2004); accord, *Wyoming* v. *Houghton*, 526 U.S. 295, 299-300 (1999) (the court "must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests"); *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979) ("In each case [the reasonableness evaluation] requires a balancing of the need for the particular search against the invasion of personal rights that the search entails."); cf. *Maryland* v. *King*, 133 S. Ct. 1958, 1970 (2013) ("To say that no warrant is required is merely to acknowledge that 'rather than employing a *per se* rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.'").

Although *Terry* and *Place* involved the government's general interest in routine crime prevention and detection, the Court has also recognized that the heightened interest of protecting the public from imminent risk of harm necessarily influences the reasonableness balancing. See, *e.g.*, *Graham* v. *Connor*, 490 U.S. 386, 396 (1989) ("proper application" of the balancing test "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight"); *Tennessee* v. *Garner*, 471 U.S. 1, 10-11 (1985) (seizure of fleeing suspect accomplished by use of deadly force is not unreasonable when "suspect poses a threat of serious physical harm, either to the officer or to others"); accord, *Scott* v. *Harris*, 550 U.S. 372, 383 (2007) ("Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety. . . . Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate."). Accordingly, in evaluating the sufficiency of an anonymous tip of drunk driving and the necessary steps an officer must take, if any, before acting on the tip, the heightened governmental interest in protecting the public must be considered.

2. Moreover, the heightened importance of this governmental interest necessitates a different calculus

than that undertaken in *J.L.* Petitioners read *J.L.* as setting out a strict rule of corroboration for anonymous tips. They extract from *J.L.* the proposition that "[w]here officers are relying on anonymous tips rather than their own observations, they must corroborate not just the tip's innocent details, but also its 'assertion of illegality.'" Pet'rs Br. 20 (quoting *J.L.*, 529 U.S. at 272). *J.L.*, however, was much more circumspect, observing, "The reasonable suspicion *here at issue* requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." 529 U.S. at 272 (italics added).

Petitioners elide the portion of the statement recognizing that the inquiry into reasonable suspicion—and the concomitant evaluation of the sufficiency of an anonymous tip—is dependent on the circumstances presented and justifications offered. Petitioners instead focus on the "assertion of illegality" language, from which they hope to construct a mandatory test. However, *J.L.* was clear that there is no basis for adopting a *per se* test when conducting the balancing for reasonable suspicion. *Id.* at 272-73. Similarly, the Court carefully noted that it was not stating a firm rule that would govern when the governmental interest was more substantial, such as for a report of a bomb. *Id.* at 273-74.

3. Petitioners' attempt to fashion a rule of general applicability for all anonymous tips that requires officers to corroborate the "assertion of illegality" is not only unsupported by *J.L.*, but threatens to resurrect the compartmentalized approach rejected in

Gates. See, *e.g.*, *Gates*, 462 U.S. at 231 n.6 ("As our language indicates, we intended neither a rigid compartmentalization of the inquiries into an informant's 'veracity,' 'reliability' and 'basis of knowledge,' nor that these inquiries be elaborate exegeses of an informant's tip."); see also *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) ("The concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'"). California properly rejected petitioners' attempt to impose a rigid rule of corroboration of illegality as contrary to the traditional balancing approach of *Terry*.

E. Petitioners' Approach Improperly Devalues the Governmental Interest in Public Safety and Runs Contrary to the Totality-of-the-Circumstances Test Reaffirmed in *Gates*

1. Petitioners challenge the state court's finding of reasonable suspicion by downplaying the importance of the governmental interest in stopping drunk or reckless driving. They assert that there is no meaningful distinction between the public safety concerns arising from the possession of a handgun and those arising from drunk driving that would warrant a different application of the balancing test.[4]

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[4] For support, petitioners point out that, in 2011, the number of firearm homicides was greater than the number of alcohol-related driving fatalities. Pet'rs Br. 30-31. Petitioners note that preliminary data for 2011 reports 11,101 homicides by firearm, U.S. Dep't of Justice, Bureau of Justice Statistics, *Firearm*

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Petitioners say that "[f]irearm possession can become firearm use in a matter of seconds . . . ." Pet'rs Br. 30. The distinction between possession and use, however, makes all the difference.

While firearms always have the potential to be dangerous, the mere possession of a gun in a pocket or waistband presents, at most, an inchoate risk to public safety. Indeed, the firearm homicide statistics cited by petitioners do not describe people killed due to firearm "possession." Only when a suspect brandishes or fires a gun is the threat to public safety

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Violence 1993-2011, 1 (May 2013), compared to 9,878 deaths in alcohol impaired driving crashes, NHTSA, *Traffic Safety Facts, 2011 Data*, 1-2 (No. 811700, Dec. 2012). Pet'rs Br. 30-31.

For a fuller picture, we add that, in 2006, the last year such statistics were compiled, the NHTSA reported that, in addition to 15,945 alcohol-related driving fatalities nationwide, there were 191,000 alcohol-related crashes causing injury and an additional 355,000 alcohol-related crashes resulting in property damage. NHTSA, *Traffic Safety Facts 2006, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*, 56 (No. 810818, 2007), http://www.nhtsa.dot.gov/Pubs/810818.pdf; see also NTSB, *Safety Report, Reaching Zero: Actions to Eliminate Alcohol-Impaired Driving*, 4-5 (No. PB2013-106566, 2013), http://www.ntsb.gov/doclib/reports/2013/SR1301.pdf.

Furthermore, in 2009, California alone reported 208,531 arrests for driving under the influence (DUI), with a 77.2% alcohol-offense conviction rate. Cal. Dep't of Motor Vehicles, *2012 Annual Report Of The California DUI Mgmt. Information System*, 9, 13-15 (2012), http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_5/S5-236.pdf.

fully realized, and police are confronted with an immediate and ongoing emergency.[5]

Unlike mere possessory offenses posing an inchoate risk, drunk drivers behind the wheel of one- or two-ton vehicles traveling down the highway present a grave and imminent threat to themselves, their passengers, and all motorists and pedestrians who happen to be on or near the road they are traveling. *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it."); *Virginia* v. *Harris*, 130 S. Ct. 10, 11 (2009) (Roberts, C.J., dissenting from denial of certiorari) ("The imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases.").

2. Petitioners also take issue with the conclusion by the court in *Wheat*, which has been embraced by most jurisdictions, that imposing a mandatory rule of corroboration of illegality—i.e., requiring that officers observe dangerous driving to corroborate the tip before initiating a stop—imposes too "'stringent'" a test under the totality of the circumstances. Pet'rs Br. 33 (quoting *Wheat*, 278 F.3d at 733). Petitioners argue that "there is nothing stringent about requiring

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[5] Carrying a bomb, although technically a possessory offense, presents unique risks to public safety. See, *e.g.*, *People* v. *Morse*, 2 Cal. App. 4th 620, 646 (1992) (observing, "Almost uniquely, bombs have an 'inherently dangerous nature'" because "the maker often loses control over the time of its detonation").

corroborating information that is so readily available," because officers need only follow the suspected drunk driver and wait for the driver to weave, or otherwise violate the traffic laws. Pet'rs Br. 33-34. Petitioners conveniently ignore that the first violation of a traffic law observed by the officer may very well be the drunk driver swerving into oncoming traffic, driving off the road into pedestrians, ramming the car stopped in front of him, or running a red light and broadsiding a crossing motorist.

Petitioners' mandatory corroboration-of-illegality requirement is also contrary to the totality-of-circumstances approach reaffirmed in *Gates* because it fails to consider the differences between tips reporting possessory offenses and those reporting observation of drunk driving. The need for corroboration of illegality or a showing of inside knowledge is typically reduced in the context of an anonymous drunk driving tip. *Adams*, *White*, *Gates*, and *J.L.* involved possessory crimes hidden from public view, for which the informant did not provide his basis of knowledge. In the absence of direct information about basis of knowledge, the Court looked to indirect information: proof of inside knowledge via corroboration of predictive information of otherwise unknowable details to establish inferentially a basis of knowledge. See, *e.g.*, *White*, 496 U.S. at 332 ("What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information—a special familiarity with respondent's affairs.").

In other words, for anonymous tips about concealed possessory offenses lacking any articulated basis of knowledge, perhaps the only way to establish the tipster had a basis of knowledge and was reliable is to test the accuracy of predictive information included in the tip, information that would demonstrate inside knowledge of the hidden offense. Such confirmation is not needed when the violation is committed in public view and the tipster reports that his or her basis of knowledge was via direct observation. When, as here, the caller reports the suspect driver ran the caller off the road, the caller has clearly identified his or her basis of knowledge about the offense, satisfying this *Gates* factor directly, without the need for any further inferential inquiry. See *Gates*, 462 U.S. at 234 ("Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.").

Moreover, for reports of traffic violations that take place on the open road, there is little chance the caller will have any "inside" information beyond that apparent to any observer, notably the make and model of the car, the time of the incident, and the direction of travel. To require additional "inside" information that can be corroborated would place an impossible burden on citizen informants reporting observed crimes.

3. Notwithstanding that inside information plays no role in a tip about an openly committed

offense, petitioners insist that officers must still corroborate the illegality itself to satisfy *J.L.*'s mandatory test for anonymous tips. However, that would demand too much of officers (and protect the public too little) under the totality of the circumstances.

As *Wheat* pointed out, requiring officers observe weaving or other traffic violations will effectively impose a probable cause requirement on traffic stops from anonymous tips because, once officers observe a traffic violation, they have probable cause to arrest. 278 F.3d at 733; *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001). Moreover, unlike a report of gun possession on a street corner, officers have no opportunity in the drunk driving context to take the less invasive step of a consensual encounter. Thus, there is no less intrusive means available to investigate the tip. *Wheat*, 278 F.3d at 736.

Most importantly, requiring the officer to do nothing and wait for a traffic violation in his presence exacerbates the very threat to public safety that warrants the investigative detention in the first place. When, as here, the suspect is driving on an undivided two-lane highway, the first observable sign of intoxication may very well be the last: a fatal swerve into oncoming traffic. *Id.* at 737. Requiring the officer to wait for observation of illegality is contrary to the very reason investigative detentions are permissible on less than probable cause.

> The Fourth Amendment does not require a policeman who lacks the precise level of

> information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Adams, 407 U.S. at 145-46 (citation omitted); cf. *Brigham City* v. *Stuart*, 547 U.S. 398, 406 (2006) ("Nothing in the Fourth Amendment required [officers] to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.").

Petitioners' argument ignores that the importance of the governmental interest is an essential element of the reasonableness balancing. The graver the threat to public safety presented by the anonymous tip, the less is needed to satisfy the *Gates* factors before officers are reasonably permitted to act by undertaking a minimally intrusive investigative detention.

4. Petitioners assert that *Wells* and *Wheat* and similar cases from other jurisdictions have argued that "automobile-related tips should be treated

differently from other anonymous tips" because a vehicle stop is less intrusive than a stop and frisk of a suspect on the street. Pet'rs Br. 36. Petitioners are incorrect.

Wells made clear that anonymous tips of drunk drivers are subject to the same totality-of-the-circumstances examination applicable in all Fourth Amendment cases, and that "[t]he guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" 38 Cal. 4th at 1083 (quoting *Terry*, 392 U.S. at 19); see also *Wheat*, 278 F.3d at 729, 736. And, in conducting this balancing, the courts correctly observed that traffic stops present only a "modest" intrusion. See *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 879-80 (1975).

The courts did not create a categorical rule that tips pertaining to an automobile were subject to a reduced inquiry under the Fourth Amendment. They did not suggest, for example, that an anonymous tip reporting the driver of a car was carrying drugs or a concealed weapon would require less corroboration than the tip in *J.L.* or *White*. Rather, the courts correctly found that the balancing calculus produced a different result under the totality of circumstances in drunk driving cases in light of the heightened governmental interest.

5. Petitioners question why a report of a "reckless" driver is entitled to similar treatment as a

report of a drunk driver. Pet'rs Br. 31. They contend that a "driver who has, perhaps out of necessity, made a single, seemingly reckless maneuver plainly does not pose the same threat to the public as an obviously intoxicated driver unable to control a vehicle . . . ." *Id.* The flaw in this proposed distinction is that drunk drivers generally manifest their intoxicated status to the public by driving recklessly. Consequently, a report of reckless driving is more than sufficient to give rise to reasonable suspicion the driver may be intoxicated. That the report may also be consistent with an isolated incident of recklessness does not undermine the justification for the stop. *United States* v. *Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct."). Indeed, the entire point of an investigative detention is to allow officers to assess the situation and determine whether further action is warranted. "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity." *Illinois* v. *Wardlow*, 528 U.S. 119, 125 (2000); cf. *Michigan* v. *Bryant*, 131 S. Ct. 1143, 1158 (2011) ("An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the first victim has been neutralized because the threat to the first responders and public may continue.").

6. Petitioners raise concerns about the possibility of malicious tipsters anonymously phoning in false reports of drunk driving to harass motorists.

Petitioners argue that without a fixed requirement of corroboration of illegality, innocent drivers may find themselves stopped by the police based on the whims of malicious motorists with cell phones intent on harassing other motorists through anonymous false reports of reckless driving. Pet'rs Br. at 34-35, 39-40.

However, when the governmental interest in protecting public safety is substantial, the mere potential for isolated instances of abuse by malicious individuals intent on mischief is not sufficient to negate a finding of reasonable suspicion or preclude an officer from conducting an investigative detention to assess the situation and neutralize any threat to public safety. See *Terry*, 392 U.S. at 15 (acknowledging potential for misuse of investigative detentions, but nonetheless observing that "a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime").

Moreover, the 911 emergency system was created to provide a means of identifying and segregating emergency calls to ensure expedited response. *United States* v. *Holloway*, 290 F.3d 1331, 1339 (11th Cir. 2002) ("Not surprisingly, 911 calls are the predominant means of communicating emergency situations."); *United States* v. *Richardson*, 208 F.3d 626, 630 (7th Cir. 2000) ("A 911 call is one of the most common—and universally recognized—means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently

needs help."). Given the public's thoroughly ingrained understanding of the system's nature and purpose, officers may reasonably treat a 911 call, even when anonymous, as identifying a possible emergency situation requiring prompt attention. "Such calls are distinctive in that they concern contemporaneous emergency events, not general criminal behavior. Additionally, the exigencies of emergency situations often limit the ability of a caller to convey extraneous details, such as the identifying information." *Holloway*, 290 F.3d at 1339. "If law enforcement could not rely on information conveyed by anonymous 911 callers, their ability to respond effectively to emergency situations would be significantly curtailed." *Id.*

Concerns about isolated acts of abuse are best addressed not by requiring inaction by the police in the face of any and every anonymous report of a threat to public safety, but by legislative action penalizing such abuses. Notably, California makes it a misdemeanor to "telephone[ ] the 911 emergency line with the intent to annoy or harass another person." Cal. Penal Code § 653x(a); see also Cal. Penal Code § 653y (criminalizing use of "the 911 telephone system for any reason other than because of an emergency"). Thus, Californians are on notice of the potential penal consequences of misuse of the 911 system for harassment.[6] These statutes not only serve to deter

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[6] The amicus brief supporting petitioners likewise points to anecdotal accounts of celebrities being subject to harassment by false 911 calls resulting in deployment of a SWAT team as

(Continued on following page)

abuses, they reinforce the reliability of anonymous tips made via the 911 system. See *Adams*, 407 U.S. at 146-47 (criminal liability for false tip increases veracity); *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring) (noting reliability of a 911 call is enhanced by the prevalence of recording and caller identification—features that may make it possible for the police, through additional investigation, to identify the person making the report—and by the threat of criminal sanctions for false reports). Thus, the use of the 911 system itself provides indicia of reliability distinct from anonymous tips offered by letter (*Gates*) or phone call on a general line (*White*).

In sum, the Fourth Amendment does not impose a mandatory rule of corroboration of illegality before an anonymous tip of drunk driving provides

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supporting its contention that officers must corroborate illegality before acting. Brief of the Nat'l Assoc. of Crim. Defense Lawyers and Nat'l Assoc. of Fed. Defenders as Amicus Curiae in Support of Pet'rs 11-12. The logical conclusion of this position is that, because of an unquantified possibility of a false report, the only available responses for police receiving an anonymous 911 call reporting a life-threatening emergency so extreme as to warrant deployment of a SWAT team would be either to ignore the call entirely or to send an officer to knock on the door and inquire if an emergency actually exists before deploying the SWAT team. Such a result makes a mockery of the Fourth Amendment. The proper method of addressing concerns about malicious pranksters is not to impose a fixed rule under the Fourth Amendment tying the hands of police officers, but rather to look to legislatures to address the problem. And, as with harassing 911 calls, California criminalizes false reports of emergencies and "swatting." Cal. Penal Code § 148.3.

reasonable suspicion. See generally *Scott*, 550 U.S. at 383 ("Although respondent's attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slosh our way through the factbound morass of 'reasonableness.'"); see also *id.* at 386 (Ginsburg, J., concurring) (noting, "The inquiry described by the Court . . . is situation specific. Among relevant considerations: Were the lives and well-being of others (motorists, pedestrians, police officers) at risk?"). Anonymous tips reporting drunk or reckless driving are evaluated under the totality-of-the-circumstances test traditionally applied in the Fourth Amendment context, with recognition that the heightened governmental interest in protecting the public from drunk drivers on the roadways weighs more heavily in the balance than general governmental interest in routine crime prevention and detection.

F. The State Court Correctly Found the Officers Had Reasonable Suspicion To Detain Petitioners Based on the Detailed Anonymous 911 Call and Confirmation of Innocent Details

Considering the totality of the circumstances, the California Court of Appeal correctly held that the officers had reasonable suspicion to detain petitioners. Although the 911 call making the initial report was anonymous, several factors support the officers' reliance on the call as providing reasonable suspicion. First, unlike in *J.L.*, *White*, and *Adams*, by reporting that petitioners' truck had run her off the roadway,

the caller provided the authorities with a personal basis of knowledge. J.A. 25a-26a. Second, the caller gave substantial detailed information about the perpetrator, including a vehicle description (silver Ford F-150 pickup), license plate number (8D94925), time of the incident (five minutes earlier), location (Highway 1, mile marker 88), and direction of travel (southbound). J.A. 25a-26a, 29a, 37a.

CHP officers were dispatched from the nearest location, heading north to intercept the truck. Upon locating the truck, officers were able to visually confirm the tip as to the make, model, and license plate number of the truck as provided by the caller. J.A. 49a-50a, 58a-59a. Moreover, the officers located the truck on Highway 1 approximately 18 minutes after the reported incident and around 19 miles south of the reported incident, as would be expected, further confirming the accuracy of the tip. Compare J.A. 36a, 46a (incident occurred at mile marker 88, approximately five minutes before the 3:47 p.m. broadcast) with *id.* at 42a, 46a (truck spotted at 4:00 p.m. at mile marker 69). Notably, because petitioners were driving on a highway, it is doubtful that anyone other than another driver on Highway 1 could have provided all of those details. The confirmation of these details bolstered the caller's reliability and veracity. See *Gates*, 462 U.S. at 244 (quoting *Spinelli*, 393 U.S. at 427 (White, J., concurring), for the proposition that "'[b]ecause an informant is right about some things, he is more probably right about other facts,'" "including the claim regarding . . . illegal activity").

The caller's use of the 911 emergency system to make the report, J.A. 28a, adds to the caller's veracity and the tip's reliability. As noted, California criminalizes misuse of the 911 system. See *Adams*, 407 U.S. at 146-47; *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring). Moreover, Ms. Moore testified that all calls to the Humboldt and Mendocino 911 dispatch centers are recorded. J.A. 33a. Thus, the police had a record of the caller's voice. In reporting the incident, the caller also gave her mile-marker location on Highway 1. By so doing, she exposed herself to possible sanctions had officers, in addition to pursuing the suspect, gone to her location and determined the call was a hoax. The voice record could have aided in determining the identity of the caller.

Finally, a report of a reckless or drunk driver on a two-lane undivided highway—who had already forced another driver off the road—presented a grave ongoing threat to public safety requiring immediate action. The importance of the governmental interest in this case tipped the balance in favor of finding reasonable suspicion on less information than in *J.L.*

Although *J.L.* found a need for corroboration of illegality in the face of a bare anonymous tip reporting a possessory offense, *J.L.* did not set out a strict corroboration-of-illegality test for finding reasonable suspicion in all situations, as advanced by petitioners. Rather, *J.L.*'s holding was an application of the rule in *Terry*, which requires courts to evaluate reasonable suspicion by balancing the strength of the governmental interest against the degree of the intrusion of

the stop, in view of the totality of the circumstances. Ultimately, "[t]he task of this Court, as of other courts, is to 'hold the balance true'. . . ." *Gates*, 462 U.S. at 241.

By finding the officers had reasonable suspicion to stop petitioners based on its evaluation of the importance of the governmental interest coupled with the quantity and quality of information provided by the anonymous 911 call, the California Court of Appeal held the balance true.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

Dated: December 16, 2013

Respectfully submitted,

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REPLY BRIEF

RECORD AND BRIEFS

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Supreme Court of the United States

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LORENZO PRADO NAVARETTE
AND JOSE PRADO NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Unlike the State of California, petitioners do not believe this Court intended to limit its unanimous holding in *Florida v. J.L.* 529 U.S. 266 (2000) to illegal gun possession cases. Respondent's Brief ("Resp. Br.") 18. Petitioners also do not agree that the reasonable suspicion standard established in *Terry v. Ohio*, 392 U.S. 1 (1968), should vary depending on the type of crime under investigation. Resp. Br. 12, 18-19. Although the State bases its argument primarily on the risk of a drunk driver causing a fatal accident while officers try to corroborate erratic driving, Resp. Br. 21, 24, 32-33, 35-36, no such risk was presented by the facts in this case, and neither the State nor its *amici* cite a single instance where such a tragedy has occurred. The State similarly fails to demonstrate that drunk driving in general is a sufficiently greater danger to public safety than concealed, illegal firearms to require any dilution of the Fourth Amendment protections established in *Terry* and *J.L.*.

Under the State's proposed rule, a tip asserting drunk or reckless driving justifies an immediate stop, no matter how vague the tip might be, as long as the officers can locate the vehicle. Resp. Br. 24-25. But officers who only corroborate the type of readily observable, descriptive details that this Court found inadequate in *J.L.* do not have the reasonable suspicion necessary to constitutionally seize vehicles and their occupants. 529 U.S. at 272-274. Officers who want to stop a vehicle must either corroborate the assertion of illegality through personal observation of erratic driving, corroboration by other motorists, or corroboration of inside, predictive information, or they must observe some other traffic violation.

This Court should protect the right of the people to be secure against the significant intrusion caused by traffic stops based on anonymous and potentially malicious tips. Allowing officers to seize citizens based on nothing but vague, uncorroborated tips about drunk or reckless driving undermines the Fourth Amendment's central teaching that officers must base their acts upon specific information about criminal activity, rather than hunches. *Terry*, 392 U.S. at 21 n.18, 27.

ARGUMENT

I. Corroboration Of A Tip's Readily Observable Descriptive Facts Does Not Show That A Tipster Has Knowledge Of Illegal Activities Whether The Tip Involves Illegal Gun Possession Or Erratic Driving, And There Is No Reason To Limit J.L.'s Holding To Its Facts

The State contends that this Court's holding in *J.L.* is limited to its "specific circumstances, namely an anonymous report of a possessory gun offense." Resp. Br. 18; see also Resp. Br. 28-29. This narrow reading of *J.L.* is not supported by the decision itself and is particularly inappropriate in this case, given the many parallels between tips about erratic driving and the tip in *J.L.*

J.L. held that a search and seizure based on an anonymous tip was unreasonable because the officers failed to verify that the tip was "reliable in its assertion of illegality" as well as in its depiction of readily observable but innocent details. 529 U.S. at 272-274. The Court in *J.L.* rejected Florida's contentions that corroboration of innocent, readily observable details demonstrated

that a tip was reliable, because Florida's "contentions misapprehend the reliability needed to justify a *Terry* stop." *J.L.*, 529 U.S. at 272. Although it would help officers correctly identify the suspect, "[s]uch a tip ... does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.*[1]

J.L.'s rationale fully applies in the context of an anonymous tip about erratic driving, because identification of a particular vehicle does not corroborate the tipster's assertion of erratic driving. As in *J.L.*, innocent details about a vehicle's appearance and location are readily observable by anyone, in contrast to the concealed "inside information" that the informants provided in *Illinois v. Gates*, 462 U.S. 213, 243-246 (1983), and *Alabama v. White*, 496 U.S. 325, 329-332 (1990).

Unless the vehicle is being driven erratically when the officer arrives, drunk driving – like illegal gun possession – is effectively concealed criminal activity. "[T]he crime of driving while intoxicated is not readily observable unless the suspected driver operates his or her vehicle in some fashion objectively indicating that the driver is intoxicated; such conduct must be observed before an investigatory stop is justified." *Harris v. Commonwealth*, 276 Va. 689, 668 S.E.2d 141, 146 (2008). If there is no reason to assume

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[1] By requiring corroboration of an assertion of "illegality" rather than an assertion of gun possession, and by analyzing reliability in the context of any *Terry* stop, not just those involving alleged illegal gun possession, 529 U.S. at 272, the Court forecloses the State's contention that *J.L.*'s holding should be ignored in all non-gun possession cases. Resp. Br. 18, 28-29.

that the tipster who accurately described J.L. was also reliable in asserting J.L. had a gun that was concealed when the officers arrived, *J.L.*, 529 U.S. at 272, then there is no reason to assume that a tipster who can accurately describe a particular vehicle is also reliable in asserting erratic driving that is not visible to the officers upon arrival.

Applying *J.L.* to cases involving tips about erratic driving is not, despite the State's claims, the same as trying to impose a categorical, *per se* rule on such cases that is contrary to this Court's holdings. Resp. Br. 9-10, 28-30. In contrast to the State's proposed rule, which treats all tips about drunk or reckless driving identically, Resp. Br. 23-25, petitioners recognize the variable reliability of such tips. *Adams v. Williams*, 407 U.S. 143, 147-148 (1972). Under the totality of the circumstances approach, the courts must consider the veracity, reliability and basis of knowledge of the informant, *Gates*, 462 U.S. at 230, 231 n.6, 233, 240. In the typical case, the veracity of the anonymous tipster is "by hypothesis largely unknown, and unknowable, " *id.* at 237, and tipsters "generally do not provide extensive recitations of the basis of their everyday observations." *Id.* Unless the tip is an exception to the "general rule" of anonymous tips described in *Gates*, reasonable suspicion will require some form of police corroboration. *White*, 496 U.S. at 329-330.

The State argues that every tip about erratic driving is an exception to the "general rule" of *Gates*, because drunk or reckless driving is "open criminal behavior committed in front of strangers," and so tips about erratic driving will "typically" be based upon personal observation, providing a basis of knowledge absent in

J.L. Resp. Br. 23, 34. The California Supreme Court followed the approach suggested by the State in *People v. Wells*, 38 Cal.4th 1078, 1086-1087, 136 P.3d 810, 45 Cal.3d 8 (2006), where there was apparently no evidence of personal observation. The dissent noted that any claim of personal observation "is no more than conjecture," *id.* at 1092 (Werdegar, J., dissenting) and the majority admitted that it was "reasonably infer[ring] that the tip came from a passing motorist. Where else would it have come from?" *Id.* at 1088.

This presumption of personal observation does not alter the totality of the circumstances analysis if it is limited to the readily observable details identifying the vehicle that are corroborated by the police, just as the Court expressed little concern for the basis of the informant's knowledge that J.L. was "a young black male standing at a particular bus stop and wearing a plaid shirt ..." *J.L.*, 529 U.S. at 268, 272. The problem arises when the presumption of personal observation extends to the assertion of illegality itself. The tip in *Wells*, and in most other cases involving accusations of erratic driving, could have come from another motorist, but it could also have come from someone who was familiar with a suspect's vehicle, travel plans or routine, *White*, 496 U.S. at 333 (Stevens, J., dissenting), from someone who had spoken to such people, or from anyone who wished to harass the people in the vehicle being identified. *J.L*, 529 U.S. at 272. According to the State, the presumption automatically makes tips about erratic driving sufficiently reliable to justify a stop, Resp. Br. 23, 34, even though doubts about the tipster's veracity and reliability remain because only readily observable, descriptive details have been corroborated. *J.L.*, 529 U.S. at 272; *White*, 496 U.S. at 329-330.

A tipster's claim to have personally observed some undefined act of drunk or reckless driving removes the need for the presumption but does not affect the reliability of the tip. As this Court has explained, it takes an "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, [to] entitle[s] [a] tip to greater weight than might otherwise be the case." *Gates*, 462 U.S. at 234. Even where a caller "specifically alleged that he had personally observed several different traffic violations involving erratic driving," *United States v. Wheat*, 278 F.3d 722, 732 (8th Cir. 2001), officers have no basis for determining whether those allegations are true until those traffic violations are corroborated.

The Fourth Amendment precludes any seizures based solely on anonymous tips without corroboration of something more than readily observable, innocent details. Tips about erratic driving may, but typically will not, provide the type of inside, predictive information the police were able to corroborate in *Gates* and *White*, such as a claim that the vehicle is headed toward a particular bar, or will get off the highway at a specific exit. Corroboration of erratic driving may be available from other motorists who contact authorities with similar tips. Officers who observe even relatively minor driving irregularities, such as weaving within a lane, will have the reasonable suspicion necessary to stop a vehicle, *Wells*, 38 Cal.4th at 1094 (Werdegar, J., dissenting), while observation of any actual traffic violations will provide probable cause for an immediate stop. *Whren v. United States*, 517 U.S. 806, 810 (1996). Contrary to the State's claims, Resp. Br. 32-33, 35, there are actually more nonintrusive avenues of investigation available in erratic driving cases than in illegal gun possession cases.

There was no such corroboration in this case. The tipster advised a dispatcher that petitioner's truck had run her off the roadway around mile marker 88 at around 3:40 in the afternoon, JA 36a, 42a, providing no other details. Another dispatcher advised officers to be on the lookout for a reckless driver. JA 36a-37a, 48a, 57a. Officers spotted and began following the truck at 4:00 p.m. near mile marker 69, ultimately stopping the truck about five miles further south at 4:05 p.m. JA 39a, 42a-44a, 46a-47a, 49a-51a. The prosecution did not introduce any evidence: that anyone reported any erratic driving during the nineteen miles between the alleged incident and the initial sighting by the officer, that either of the trained CHP officers observed any erratic driving while following the vehicle for nearly five miles, or that the officers observed any other traffic or equipment violations that would justify a stop. JA 39a, 46a-47a, 49a-51a.

In this case, not only was the assertion of illegality uncorroborated, but the officers' inability to corroborate any erratic driving despite following the truck for nearly five miles undermined whatever suspicion the tip had raised. Under the totality of the circumstances, the officers' ability merely to locate the vehicle described in the tip did not provide the reasonable suspicion necessary to justify the stop.

II. Despite Its Emphasis On Governmental Interest, The State Has Not Provided Any Doctrinal Or Evidentiary Basis For Diluting The Reasonable Suspicion Standard Established By This Court

Assuming *J.L.*'s holding applies in non-gun possession cases, the State argues that because drunk driving

presents a more serious threat to public safety than concealed weapons, tips about erratic driving "require a less demanding showing of the reliability of an anonymous tip to supply reasonable suspicion." Resp. Br. 12, see also 18-19, 28. The State's claim that *Terry's* reasonable suspicion standard is actually a sliding scale that changes depending on the nature of the crime under investigation is not supported by this Court's decisions over the more than forty years since *Terry* was decided, and was specifically rejected in *J.L.*, 529 U.S. at 272-274.

Balancing between the opposing interests of the government and the people is necessary to determine whether it is reasonable to require probable cause or reasonable suspicion, or whether no suspicion at all is required. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37-44 (2000); *Dunaway v. New York*, 442 U.S. 200, 207-211 (1979). But the probable cause standard is not dependent on the crime under investigation, *Gates*, 462 U.S. at 238; *Dunaway*, 442 U.S. at 207-211, and the reasonable suspicion standard does not change depending on whether officers are investigating shoplifting, the "serious threat that armed criminals pose to public safety," or murder. *J.L.*, 529 U.S. at 272; *Dunaway*, 442 U.S. at 208-211.

If the Court adopts the State's approach, prosecutors will undoubtedly argue that other crimes deserve their own reasonable suspicion standard, contending for example that the government interest in combating gang activities or domestic violence requires other dilutions of *Terry*. Logically, if more dangerous crimes justify a reduced form of reasonable suspicion, officers would need a higher level of suspicion to justify a stop to investigate shoplifting or receipt of stolen property.

The result would be chaotic for the lower courts and for officers in the field.

Even if the Court were considering adopting a reduced reasonable suspicion standard for particularly dangerous crimes, the State has not shown any basis for departing from *Terry* and *J.L.* in this case. The lynchpin of the State's argument is that it is too dangerous for officers to corroborate erratic driving because, unlike the merely "inchoate" threat posed by concealed firearms, Resp. Br. 31, "additional confirmation [of erratic driving] could come at the price of injury or death to innocent motorists and pedestrians." Resp. Br. 24; see also 21, 33, 35-36. This alarming scenario has been used to distinguish the holding in *J.L.* for over a decade, beginning in *State v. Boyea*, 171 Vt. 401, 765 A.2d 862, 862, 867 (2000), and continuing in *Wheat*, 278 F.3d at 729-730, 736-737, and *Wells*, 38 Cal.4th at 1086-1087; see Resp. Br. 21. *Wheat* specifically noted the "substantial government interest in effecting a stop as quickly as possible." 278 F.3d at 737.

The facts of this case completely undermine the State's primary justification for not following the holding in *J.L.* The tipster did not say there were any "drunk drivers behind the wheel of one- or two-ton vehicles" endangering everyone else "on or near the road they are traveling," Resp. Br. 32, but described a single instance of allegedly reckless driving that had occurred nineteen miles away from where the officers spotted the truck. While they were not required to do so under *Wells*, the officers followed the truck for nearly five more miles, confirming that it did not present a threat to anyone else on or near Highway 1. JA 39a, 46a-47a, 49a-51a. There is

simply no reason for this Court to adopt a new rule in this case based on a hypothetical scenario that is contrary to the facts.

Going beyond this case, and despite access to the voluminous archives of the California Highway Patrol ("CHP") and the California Department of Motor Vehicles, the State does not provide even anecdotal evidence that such a tragedy has ever occurred, much less any statistics demonstrating the magnitude of the risk. The State is supported by *amici* who enjoy access to similar databanks and who make the same argument, Brief For The United States As Amicus Curia Supporting Respondent ("U.S. Amicus Br.") 22-24; The Brief of Florida, ... In Support Of The Respondent State of California ("Florida Amicus Br.") 11, 17-18, yet none of the other jurisdictions has cited a single instance where a drunk driver has caused an accident while being followed by officers.

In short, more than thirteen years after it was first raised in *Boyea*, the State's primary argument against applying *J.L.* to tips about erratic driving has no factual support, either within the confines of this case or beyond it. While it is certainly possible that a suspect will crash while officers are trying to corroborate erratic driving, it is also possible that a suspect will pull out a gun and start firing while officers are trying to confirm concealed firearms. Such possibilities do not compel dilution of the people's Fourth Amendment right against unreasonable seizures.

The State has also not shown that drunk driving in general poses a greater threat to public safety than

firearms, and *J.L.* specifically rejected a "firearms exception" to *Terry*, despite acknowledging the "extraordinary dangers" posed by firearms. 529 U.S. at 272-273. Not only do firearm homicides kill more people each year than drunk driving, as the State acknowledges, Resp. Br. 30-31 n.4, but the annual toll for drunk driving has dropped from around 25,000, *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 451 (1990), to under 10,000, and approximately two-thirds of the people killed by drunk driving are the drunk drivers themselves. NHTSA, Traffic Safety Facts 2011 Data, Alcohol Impaired Driving 1 (DOT HS 811 700 December 2012); Florida Amicus Br. 5.

Last year, multiple opinions in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), acknowledged the government's interest in combating the serious problem of drunk driving, but the Court refused to dilute the warrant requirement by adopting a *per se* rule of exigency for blood draws. 133 S.Ct. at 1565-1566 (Sotomayor, J., plurality), 1568, 1571 (Roberts, C..J., concurring and dissenting). Despite repeatedly mentioning the government's heightened interest in this case, the State has simply not demonstrated that drunk driving poses the type of extreme danger imagined by this Court in *J.L.*, 529 U.S. at 273-274. Contrary to Resp. Br. 26, petitioners are not suggesting that governmental interest in public safety constitutes an exception to the general rules governing search and seizure. Petitioners argue that this Court, in speculating about a situation where the danger was "so great as to justify a search even without a showing of reliability," 529 U.S. at 273-274, was referring to "potentially cataclysmic events like a terrorist attack,"

Pet. Br. 26-27, not to routine tips about erratic driving.[2] In refusing to deviate from *Terry*'s reasonable suspicion standard despite the extraordinary danger presented by firearms, the Court reasoned that it had already struck the appropriate balance in *Terry*. 529 U.S. at 272-273.

This Court should adhere to its Fourth Amendment jurisprudence and reject the State's unsupported claim that tips about erratic driving require any dilution of the reasonable suspicion standard. Resp. Br. 12, 18-19.

III. The State's Proposed Rule Would Allow Officers To Seize Vehicles And Their Occupants Based On The Hunches Of Anonymous Tipsters

Under the State's proposed rule, an anonymous tip would automatically provide reasonable suspicion for a vehicle stop as long as the tip described a vehicle at a particular location and stated it had been driven recklessly, and an officer was able to locate that vehicle. Resp. Br. 24. Such a rule directly violates this Court's precedents, which preclude officers from seizing a vehicle unless they have reasonable suspicion based on articulable facts that the occupants of a vehicle are engaged in criminal activity. *United States v. Cortez*, 449 U.S. 411, 417-418 (1981).

The rule proposed by the State unconstitutionally gives anonymous tipsters the power to make the reasonable suspicion determination that should be

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[2] Petitioners note that, in rejecting the use of suspicionless checkpoints to interdict narcotics in *Edmond*, the Court similarly speculated that the Fourth Amendment might permit checkpoints in other situations, including "to thwart an imminent terrorist attack,..." 531 U.S. at 44.

reserved to trained police officers, while reducing those officers to quasi-bounty hunters, seizing vehicles based on the hunches of others.

Although the State denies that the cases it relies upon have created any type of automatic "automobile exception" to *Terry* and *J.L.*, Resp. Br. 24-25, the State has proposed a rule so overly inclusive that it would establish an automatic exception if one did not already exist. The State claims to be following the totality of the circumstances test adopted in *Gates*, Resp. Br. 24-25, 28-30, but in practice its proposed rule takes a sledgehammer approach, not the "finely tuned approach" envisioned in this Court's cases. *McNeely*, 133 S.Ct. at 1559.

The State summarizes the rule it has gleaned from "*Wells* and similar cases from other states" as follows:

> [A]n anonymous 911 call reporting the caller's personal observation of drunk or reckless driving and providing a detailed description of the vehicle, its location, and direction of travel, is sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, are able to corroborate only the innocent details of the tip.

Resp. Br. 24.

The State lists cases from other states, Resp. Br. 19-20 n. 2, but only discusses *Wells*, and *Wells* simply does not support a rule that would find reasonable suspicion based on bare assertions of erratic driving. The California Supreme Court stated that an anonymous tip, in addition

to providing identifying information that was verified by the officers, should specify "a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity." *Id.* at 1086, citing *Wheat*, 278 F.3d at 732. *Wheat* had explained, "A law enforcement officer's mere hunch does not amount to reasonable suspicion, see *Terry*, 392 U.S. at 27, ...; *Illinois v. Wardlow*, 528 U.S. 119, 123-24, ...(2000); *a fortiori*, neither does a private citizen's." 278 F.3d at 732.[3] Distinguishing state supreme court cases that had found stops to be unjustified because the uncorroborated allegation of drunken driving was "'short on specifics,'" or was based on the tipster's "'belief,'" *Wheat* found the stop in the case before it justified because the caller claimed to have personally observed specific traffic violations. *Id.*

The State's proposed rule allowing officers to stop vehicles based on vague, anonymous assertions of drunken or reckless driving disregards the "demand for specificity in the information upon which police action is predicated [that] is the central teaching of this Court's Fourth Amendment jurisprudence." *Terry*, 392 U.S. at 21 n.18. Unlike *Wells* and *Wheat*, the State refuses to acknowledge that *any* tip about drunk or reckless driving could be too vague to justify a vehicle stop. Resp. Br. 24-25. As discussed in section I, *supra*, the State's purported requirement of "personal observation" does not increase the reliability of a tip. Resp. Br. 24. A tipster's claim to have personally observed something the tipster

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[3] In summarizing cases that had upheld uncorroborated stops, the Iowa Supreme Court similarly determined that in each of those cases, "the caller described specific examples of traffic violations, indicating the report was more than a mere hunch." *State v. Kooima*, 833 N.W.2d 202, 209 (Iowa 2013).

concluded was drunk or reckless driving is not the sort of "explicit and detailed description of alleged wrongdoing" envisioned in *Gates*, 462 U.S. at 234.

Any sincere attempt to apply a totality of the circumstances test could not treat identically the tip in *Wells* and the one in this case, yet the State purports to see no distinction between them, lumping together all tips asserting drunk or reckless driving. Resp. Br. 37-38. Disregarding for the moment the problems of veracity and reliability discussed in section I, *supra*, the *Wells* tip asserted that a possibly intoxicated driver was "weaving all over the roadway" a few miles away from the officer, who promptly stopped the vehicle without attempting to corroborate any weaving. 38 Cal.4th at 1081. The tip in this case alleged a single incident of reckless driving that was completed long before and twenty-four miles away from the vehicle stop, JA 37a, 39a, 42a-46a, which only occurred after officers had followed the truck for a significant distance without apparently observing so much as an equipment violation. JA 39a, 46a-47a, 49a-51a; *Whren*, 517 U.S. at 810. Even if the officer in *Wells* had a reasonable suspicion that he was pulling over a drunk driver, which petitioners deny, the officers in this case had negated whatever suspicion the tip had raised.

The tip in this case stated that the truck had allegedly run the tipster "off the roadway." JA 25a, 36a. Even this assertion of illegality, which was not conveyed to the officers,[4] was not sufficiently specific to satisfy *Cortez* and

[4] The State contends that the dispatcher told the officers to be on the lookout for a "reckless driver who had run the reporting party off the roadway." Resp. Br. 2. The State cites only the

Terry, because the officers could only speculate about what petitioners had allegedly done. Without any indication which way the tipster was traveling, the officers had no idea whether petitioners had, allegedly, engaged in a game of "chicken" and forced the tipster off the road to avoid a head-on collision, or had in the opinion of the tipster simply come too close to his or her car while lawfully passing it on a two-lane highway. Either way, the stop is based on the tipster's conclusory assertion of illegality, not on specific information provided to the officer. *Terry*, 392 U.S. at 21 n.18, 27.

The information actually conveyed to the officers was even less specific, merely a vague direction to be on the lookout for a reckless driver going south on Highway 1. JA 36a, 48a, 57a. When the officers pulled over the truck containing petitioners, they had no idea what petitioners had allegedly done, or why the tipster or the dispatcher had concluded the truck was being driven recklessly. The information actually provided to the officers is important because the "reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." *J.L.*, 529 U.S. at 271. The Fourth Amendment requires that trained police officers

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testimony of the dispatcher at JA 35a-37a, who testified that the broadcast said to be on the lookout for a reckless driver, JA 36a, as did Officer Williams. JA 48a, 57a. The State also cites pages a20-a23 of the Court of Appeal Opinion which, as explained in Pet. Br. 4 n.2, 22, concluded that the magistrate had impliedly found that the dispatch stated the reporting party had been run off the roadway, despite the testimony of the dispatcher and Williams. Even the Court of Appeal did not conclude that the dispatch included both "reckless driver" and "ran off the roadway," as the State now asserts.

determine whether there is reasonable suspicion to seize an individual, and precludes even trained officers from acting on an "inchoate and unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27. The State's proposed rule allows the constitutional determination of reasonable suspicion to be made by anyone in possession of a cell phone. *Wheat*, 278 F.3d at 732.

IV. Advances In 911 Technology Have No Relevance In This Case, And Do Not Enhance The Reliability Of Anonymous Tips Because Tipsters Still Understand That They Cannot Be Held Accountable

In an attempt to demonstrate that the Court should view anonymous tips with less skepticism, the State and its *amici* devote considerable attention to improvements in the 911 system which arguably make anonymous 911 tips more like tips from known informants. Resp. Br. 39-42; U.S. Amicus Br. 16-18; Florida Amicus Br. 8-11, 19-20.

While such technological advances may affect the reliability of a tip in an appropriate case, those issues should be addressed in a case where the prosecution has raised them "[o]n the record created at the suppression hearing." *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring).

There was no evidence in this case as to whether the CHP in rural counties like Humboldt and Mendocino routinely tracked informants' phone numbers or knew where 911 calls originated. According to the actual testimony, the tipster's call in this case could have come from either county. JA 33a-34a. While there was evidence that the call was recorded, JA 33a, and the prosecution indicated that the tape contained the informant's name,

JA 18a, the tape itself was not introduced at the motion to suppress, so the parties and courts have "properly treated the call as anonymous." Resp. Br. 1, n.1. As a result, the record simply does not provide a basis for the Court to consider technological advances that played no role in the detention here.

On a broader scale, the State has not demonstrated that any advances in 911 technology have been adopted so universally that the Court should consider any alteration of its treatment of anonymous tips. As explained in The Brief of National Association of Criminal Defense Lawyers And National Association of Federal Defenders As Amici Curiae In Support of Petitioners ("NACDL Amici Br.") 8-10, many law enforcement agencies do not track 911 calls, while others specifically promise anonymity; the New York Police Department, for example, promises all 911 callers anonymity if requested. http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#5 (last visited 1/3/14). According to Florida Amicus Br. 9, California began a crackdown on drunk driving in 2007, the year before the call that started this case, and published a fact sheet advising motorists to call 911 to report erratic driving but promising, "You do not have to give your name." The ability to trace emergency calls itself is actually diminishing, because 25 percent of mobile phone users in this country now use prepaid cell phones, which are usually untraceable. NACDL Amici Br. 9-10. Finally, technological advances also allow those who wish to harass others to disguise their numbers so that it appears someone else is making the tip, a dangerous practice that has drawn the attention of the FBI, NACDL Amicus Br. 11-12, and further undermines the reliability of uncorroborated anonymous tips.

Unless 911 callers feel they have placed their credibility at risk and may be prosecuted for a false tip, law enforcement's ability to trace emergency calls does not increase their reliability. 4 Wayne R. LaFave, *Search and Seizure* § 9.5(i), p. 815-816 (4th ed. 2012). Few harassers are likely to be concerned that officers will investigate an unconfirmed tip about erratic driving, particularly given the difficulty of establishing that such a tip was false, much less intended to harass. The State cites statutes governing misuse of the 911 system, Resp. Br. 40, but assuming malicious California tipsters are aware of them, the worst punishment they face for one call is a written warning.[5] By contrast, the informant in *Adams*, 407 U.S. at 147, was subject to immediate arrest for a false complaint.

While the State does not share this Court's skepticism about anonymous tips, Resp. Br. 38-39, it provides "no data about the reliability of anonymous tips." *J.L.*, 529 U.S. at 275(Kennedy, J., concurring). The State simply dismisses the problem of disguised 911 calls, arguing obliquely that if a 911 caller claimed he had shot one family member and "might kill others in the house," NACDL Amici Br. 11-12, petitioners would insist that the police would have to either ignore the call or, at most, "send an officer to knock on the door,..." Resp. Br. 40-41, n.6. In reality, and considering the totality of the circumstances, petitioners do recognize a distinction between an anonymous tip about reckless driving, and a distraught caller threatening to kill members of his family.

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[5] See California Penal Code sections 653y (written warning issued for first misuse of 911 system, $50 fine for second), and 653x (use of 911 line with intent to harass is considered a misdemeanor, but an "intent to harass is established by repeated calls over a period of time,...").

V. The Fourth Amendment Protects The People From Unreasonable Seizures On Public Highways

Neither the gravity of a particular threat nor the professed need for efficient law enforcement trumps the Fourth Amendment rights of the people. *Arizona v. Gant*, 556 U.S. 332, 349 (2009); *Edmond*, 531 U.S. at 42. While petitioners recognize that it would be easier for officers to initiate vehicle stops if they did not have to corroborate any erratic driving, the Fourth Amendment precludes them from seizing vehicles and their occupants based on the hunches of unknown informants.

The State demonstrates little regard for its citizens' "right to be let alone – the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928)(Brandeis, J., dissenting)(overruled by *Katz v. United States*, 389 U.S. 347, 357 (1967). The State dismisses that right with a single citation to *United States v. Brignoni-Ponce*, 422 U.S. 873, 879-880 (1975), at Resp. Br. 37. Significantly, although *Brignoni-Ponce* described the intrusion of vehicle stops by Border Patrol officers on motorists as modest, and recognized the validity of the governmental interest in preventing illegal immigration, the Court still held the stops to be unconstitutional unless they were based on reasonable suspicion that a particular vehicle contained illegal aliens. *Id.* at 881-883. The Court recognized that suspicionless stops affected the rights, not only of smugglers and illegal immigrants, but also of the "large volume of legitimate traffic" in the areas involved, subjecting those motorists to "potentially unlimited interference with their use of the highways,..." *Id.* at 882.

The year after it decided *Brignoni-Ponce*, the Court found in *United States v. Martinez-Fuerte*, 428 U.S. 543, 557-559 (1976), that the intrusion suffered by those subjected to individual vehicle stops was more significant, distinguishing that intrusion from the much lower intrusion experienced by motorists stopped at checkpoints. As discussed in Pet. Br. 12, 15, 36-38, the Court has since addressed in detail the extent of the intrusion of individual vehicle stops on drivers and passengers, recognizing that many people probably feel a greater sense of privacy and security in their cars than they do as pedestrians. *Delaware v. Prouse*, 440 U.S. 653, 662 (1979). Whether a stop occurs on a busy urban street where friends and acquaintances can observe it, or in the middle of the night on a lonely country road, *Wells*, 38 Cal.4th at 1093 (Werdegar, J., dissenting), the intrusion is not a slight one, particularly now that the Court has also clarified that officers can order passengers as well as drivers to get out of a stopped vehicle, and can even frisk the vehicle's occupants if warranted under *Terry*. *Arizona v. Johnson*, 555 U.S. 323, 330-334 (2009).

Before officers activate their emergency lights, turn on their sirens, and pull over vehicles that in most cases will contain law-abiding drivers and passengers, they must have a reasonable suspicion based on articulable facts that the occupants of a vehicle are engaged in criminal activity. *Cortez*, 449 U.S. at 417-418. Anonymous tips indicating the location of a possibly drunk or reckless driver do not supply the reasonable suspicion necessary to seize a vehicle without further corroboration. While anonymous tipsters perform a valuable function in alerting authorities to vehicles that are possibly being driven dangerously, this Court should not delegate to those tipsters the

constitutional role played by law enforcement officers in determining whether a vehicle can be constitutionally seized.

The officers themselves can ensure they have the requisite reasonable suspicion without any intrusion on the motorists or their passengers. Once officers have a vehicle under surveillance, they can stop it immediately if they corroborate any erratic driving, if the erratic driving is corroborated by other informants making the same assertions, or if they observe any other traffic violation. *Whren*, 517 U.S. at 810; *Wells*, 38 Cal.4th at 1094 (Werdegar, J., dissenting).

Unlike the State's proposed rule, such an approach properly accommodates "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry*, 392 U.S. at 19.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the California Court of Appeal.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

LORENZO PRADO NAVARETTE AND
JOSE PRADO NAVARETTE, PETITIONERS

v.

STATE OF CALIFORNIA

ON WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the Fourth Amendment requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle.

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In the Supreme Court of the United States

No. 12-9490

LORENZO PRADO NAVARETTE AND
JOSE PRADO NAVARETTE, PETITIONERS

v.

STATE OF CALIFORNIA

ON WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case presents the question whether police officers may conduct a traffic stop based on an anonymous tip reporting drunken or reckless driving without corroborating that tip by observing dangerous driving themselves. Because that question arises in prosecutions brought by the United States, and because federal officials respond to reports of drunken and reckless driving in national parks and on other federal land, the United States has a substantial interest in the resolution of this case.

STATEMENT

Following the denial of their motion to suppress evidence, petitioners pleaded guilty to transportation of marijuana in violation of Cal. Health & Safety Code

§ 11360(a) (West 2007). They were sentenced to 90 days of imprisonment and three years of probation. Pet. App. 7. The California Court of Appeal affirmed, *id.* at 1-25, and the California Supreme Court denied review, *id.* at 38.

1. On the afternoon of August 23, 2008, a California Highway Patrol dispatcher in Humboldt County, California, received a 911 call from a caller who reported that a silver Ford F-150 pick-up truck had run her vehicle off the road. Pet. App. 3-4, 27-28, 32. The caller provided the truck's license plate number (8D94925), as well as information concerning its location (near mile marker 88 on Highway 1), and its direction of travel (southbound). *Id.* at 4, 27-28.

The dispatcher in Humboldt County relayed the report to dispatchers in a 911 call center for Mendocino County, directly to the south. See J.A. 43a-44a. Matia Moore and Sharon Odbert were working as a dispatch team in the Mendocino County call center that afternoon, with Moore taking incoming emergency reports from 911 callers and from dispatchers in other areas and then relaying them via computer to Odbert, who would broadcast bulletins to officers in the field. Pet. App. 3; J.A. 21a-23a. Upon receiving a call from the Humboldt County dispatcher at about 3:47 p.m., Moore keyed into her system "[s]howing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadways and was last seen approximately five [minutes] ago." J.A. 36a; see also Pet. App. 3.

Odbert immediately broadcast that information to California Highway Patrol officers working along the coast. Pet. App. 4, 21-22 n.8; J.A. 36a-37a. Two offic-

ers, Sergeant Francis and Officer Williams, each responded that they were en route. Pet. App. 4; J.A. 37a-38a. Then, at 4 p.m., Sergeant Francis reported that he had just passed the pick-up truck near mile marker 69. Pet. App. 4. He made a U-turn to follow the car. See *id.* at 24. Shortly thereafter, Officer Williams reported that the pick-up truck and Sergeant Francis's patrol car had passed him. *Id.* at 4. Officer Williams made a U-turn to follow them as they headed south on the undivided two-lane highway. *Ibid.*; *id.* at 24.

At about 4:05 p.m., at the entrance to MacKerricher State Park, Sergeant Francis pulled over the pick-up truck that the 911 caller had described and Officer Williams pulled up behind both cars. Pet. App. 4. Lorenzo Prado Navarette was the truck's driver and Jose Prado Navarette was the sole passenger. *Id.* at 4-5; J.A. 51a. The officers approached the passenger side of the truck and asked petitioners for identification. Pet. App. 4-5. After realizing that Lorenzo Prado Navarette had provided only a photocopy of his identification card, the officers returned to the driver's side of the truck to request additional identification. *Id.* at 5. The officers smelled marijuana from that location. *Ibid.* The officers told petitioners to get out of the truck. *Ibid.* They searched the vehicle, whereupon they found four large bags of marijuana in the truck bed, along with fertilizer, hand clippers, and oven bags. *Ibid.*

2. Petitioners were charged with transportation of marijuana in violation of Cal. Health & Safety Code § 11360(a) (West 2007) and possession of marijuana for sale in violation of Cal. Health & Safety Code § 11359 (West 2007). Pet. App. 3. They moved to

suppress the evidence seized from their truck, arguing that the traffic stop that led to discovery of the marijuana was not supported by reasonable suspicion of criminal activity. *Id.* at 2.

A magistrate judge held an evidentiary hearing on the suppression motion, at which Officer Williams and dispatchers Moore and Odbert testified. See J.A. 17a-68a. The recorded 911 call was not offered into evidence at the suppression hearing, and no testimony or other evidence was introduced concerning identifying information provided by the 911 caller. Pet. App. 28-29; J.A. 64a-65a. Accordingly, although a prosecutor represented during a court proceeding that the caller gave her name during the recorded 911 call, see J.A. 18a-19a; Pet. App. 12 n.5, the parties and the courts have treated the call as anonymous.

After the evidentiary hearing, the magistrate judge denied the suppression motion, finding reasonable suspicion for a traffic stop in the 911 caller's report of being driven off the road by petitioners' vehicle, coupled with the officers' corroboration of details in the caller's report such as the truck's license plate, color, location, and direction of travel. J.A. 73a-74a. The California Superior Court upheld the magistrate's ruling and denied petitioners' request for reconsideration. Pet. App. 26-37. Petitioners subsequently pleaded guilty to transportation of marijuana. They were each sentenced to 90 days of imprisonment and three years of probation. *Id.* at 7.

3. The California Court of Appeal affirmed. Pet. App. 1-25. The court found that the traffic stop had been supported by reasonable suspicion. *Id.* at 14-25. Applying a multi-factor analysis derived from *People* v. *Wells*, 136 P.3d 810 (Cal. 2006), cert denied, 550

U.S. 937 (2007), the court reasoned that while anonymous tips concerning drunken or reckless driving crimes must display particular indicia of reliability to justify a vehicle stop, that test was satisfied. *Ibid.* First, the court explained, "[t]he contents of the tip supported an inference that it came from the victim of the reported reckless driving," and thus enhanced its reliability. Pet. App. 18. Second, officers had promptly corroborated "significant innocent details of the tip—the detailed description of the vehicle including its license plate number and the accurate description of its location and traveling direction." *Ibid.*

The court of appeal also considered the danger of the reported conduct in determining whether a stop was justified. It reasoned that "the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity." Pet. App. 18. "The reported illegal driving [of] running another car off the roadway," the court noted, "carried an unusually high risk of collision and injury." *Id.* at 24. And that risk was further enhanced because petitioners were traveling on "an undivided two-lane road, thus raising the risk of a collision with oncoming traffic." *Ibid.*

Finally, the court of appeal rejected petitioners' argument that any reasonable suspicion was dispelled because officers stopped the truck "only after they had followed it for five minutes without observing any erratic driving." Pet. App. 23. The court emphasized that the five-minute interval resulted because both officers "needed to make U-turns [to] catch up to the vehicle before they could pull it over." *Id.* at 24. The court concluded that, under all the circumstances, the

evidence of the tip's reliability and the danger of the reported conduct justified "a prompt investigative stop despite [the officers'] brief observation of the vehicle without incident." *Ibid.* The California Supreme Court denied review. *Id.* at 38.

SUMMARY OF ARGUMENT

When a 911 caller anonymously reports that a particular vehicle is engaged in specific acts of reckless or drunken driving, officers who locate the vehicle and corroborate the non-criminal details contained in the caller's report may reasonably stop the vehicle briefly to investigate—instead of awaiting further dangerous driving that could place lives at risk.

A. The central inquiry in Fourth Amendment analysis is reasonableness. The reasonableness of a search or seizure turns on balancing the governmental interests furthered by the action against the extent to which the search or seizure intrudes on privacy or liberty interests. As a general matter, that balancing permits police officers to make brief investigative stops based on reasonable suspicion of criminal activity—a standard that requires considerably less than proof of wrongdoing by a preponderance of the evidence, and is less demanding than probable cause.

This Court has routinely held that an anonymous tip of illegal activity can meet this relatively low standard so long as there is evidence of the tipster's veracity and basis of knowledge. Thus, reliance on a tip has been deemed justified when officers corroborated aspects of an informant's report that suggested the informant had a valid basis of knowledge and that the informant had been truthful, see *Illinois* v. *Gates*, 462 U.S. 213, 239 (1983); *Alabama* v. *White*, 496 U.S. 325, 328 (1990), but unjustified when there has been

no corroboration suggesting basis of knowledge or veracity, see *Florida* v. *J. L.*, 529 U.S. 266, 274 (2000). That standard is met in reckless and drunken driving cases when officers promptly corroborate a 911 caller's description of a particular vehicle and its location, because corroboration of those facts provides evidence that the caller was an eyewitness to the driving of the reported vehicle and also provides evidence of the caller's truthfulness. *J. L.*, on which petitioners rely, is not to the contrary. That case, involving a concealed possession offense, simply established that it is not ordinarily reasonable for officers to act on a bare report of a crime in the absence of any evidence that the informant had a basis of knowledge concerning the crime described in the tip.

The reasonableness of reliance on 911 calls that are corroborated as to informants' basis of knowledge and veracity has only been enhanced in recent years. Technological advances make it easier to locate unnamed callers and hold them accountable for reports, as anonymous callers are likely aware.

B. A balancing of the government's interest in removing drunken drivers from the road against the intrusion of a vehicle stop also establishes that it is reasonable for officers to briefly stop drivers based on reports of reckless or drunken driving. Waiting for officers to observe dangerous driving for themselves could put lives at risk. Because the Fourth Amendment calculus is one of reasonableness under all the circumstances, comparatively less evidence may justify a seizure when the seizure is supported by particularly significant governmental interests, or when the intrusion's impact on privacy is slight. Both these circumstances are present here.

Brief stops of vehicles reported to be engaged in reckless or drunken driving serve vital interests that cannot be adequately served through other means. Reckless and drunken driving poses an immediate threat to life, limb, and property, as this Court has recognized. And citizen reporting is critical to detecting and stopping such drivers. The federal government has thus encouraged States to adopt citizen-reporting programs focused on drunken driving, and many States have done so.

On the other side of the balance, traffic stops are brief and limited intrusions into an area in which citizens have diminished expectations of privacy. Because vehicles are subject to pervasive governmental controls and are principally used for transportation, individuals have diminished expectations of privacy in their vehicles. Traffic stops, moreover, are brief and typically non-invasive intrusions into these areas. Accordingly, the strong governmental interest in removing drunken drivers from the road before they endanger others outweighs the minimal intrusion of a brief stop.

C. Petitioners' arguments for a contrary approach are not consistent with this Court's precedents. Petitioners' high degree of skepticism about anonymous tips runs counter to this Court's recognition that anonymous tips often contain truthful reports that are critical to solving crimes. Petitioners' approach would also be hard to square with the totality-of-the-circumstances analysis this Court has adopted for reasonable suspicion, because it would treat a single factor—whether an informant possessed inside information—as the sole determinant of an anonymous

informant's reliability without consideration of the other circumstances that may be present.

D. The California Court of Appeal correctly held that officers had reasonable suspicion to stop petitioners' truck based on the 911 call in this case. The 911 call indicated that the caller was an eyewitness to particular acts of reckless driving, and officers' confirmation of the caller's description of petitioners' vehicle, its location, and its direction of travel gave them reason to believe that the caller was trustworthy and had an eyewitness basis of knowledge concerning the truck's movements. The reported reckless driving was conduct that posed a significant hazard. And the officers' failure to see additional reckless driving in the few minutes before the stop did not dispel the reasonable suspicion from the tip. Accordingly, the decision of the California Court of Appeal should be affirmed.

ARGUMENT

OFFICERS MAY BRIEFLY STOP A VEHICLE BASED ON AN ANONYMOUS 911 CALL REPORTING RECKLESS OR DRUNKEN DRIVING WHEN THEY CORROBORATE INNOCENT DETAILS OF THE REPORT

Because the Fourth Amendment protects "against unreasonable searches and seizures," U.S. Const. Amend. IV, the "central inquiry" is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security," *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). In assessing reasonableness, the Court balances the extent to which a search or seizure is needed to promote legitimate governmental interests against the degree to which the search or seizure intrudes on a person's privacy interests. See, *e.g.*, *id.* at 20-21; *United States*

v. *Knights*, 534 U.S. 112, 118-119 (2001); *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 555 (1976). This case concerns the reasonableness of a brief stop of a vehicle based on an anonymous 911 report of reckless or drunken driving, when the anonymous report is confirmed as to both the vehicle's description and its whereabouts. As most state and federal courts to consider this issue have held, given the nature of eyewitness tips, the serious and immediate harms threatened to the public by reckless and drunken driving, and the diminished privacy expectations of motorists on public roads, officers who confirm innocent details of a tip may reasonably perform such a stop rather than awaiting additional dangerous driving that could place lives at risk.

A. An Anonymous 911 Call Establishes Reasonable Suspicion When Corroboration Indicates That The Caller Had A Basis Of Knowledge And Was Truthful

1. Investigatory detentions may, as a general matter, be based on "reasonable suspicion" of criminal activity that is "supported by articulable facts." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989); see also *Terry*, 392 U.S. at 30. This requires more than a "hunch," but "considerably less than proof of wrongdoing by a preponderance of the evidence," *Sokolow*, 490 U.S. at 7, and less than a showing of probable cause, *United States* v. *Arvizu*, 534 U.S. 266, 274 (2002). Instead, all that is required is "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas* v. *United States*, 517 U.S. 690, 696 (1996) (quoting *United States* v. *Cortez*, 449 U.S. 411, 417-418 (1981)). As petitioners concede (Br. 13-15), a showing of reasonable suspicion is categorically sufficient to support a brief stop of a

vehicle, because "[m]ost traffic stops * * * resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*," *Arizona* v. *Johnson*, 555 U.S. 323, 330 (2009) (quoting *Berkemer* v. *McCarty*, 468 U.S. 420, 439 n.29 (1984)); see also *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 884 (1975); cf. *Delaware* v. *Prouse*, 440 U.S. 648, 663 (1979) (finding vehicle stops unjustified to check licenses and registrations "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered").

Citizen tips—whether anonymous or attributed—are often a valuable and reliable source of information justifying police action. See, *e.g.*, *Illinois* v. *Gates*, 462 U.S. 213, 237-238 (1983); *Adams* v. *Williams*, 407 U.S. 143, 147 (1972). Whether a tip is reliable enough to warrant a particular Fourth Amendment intrusion turns on a "flexible, common-sense" totality of the circumstances analysis, with no one consideration dispositive. *Gates*, 462 U.S. at 239. In that calculus, however, the Court has treated as "highly relevant" any evidence that an informant had a reliable basis of knowledge and was being truthful. *Id.* at 230.

This Court has examined different types of anonymous tips in three recent cases. In *Gates*, the Court held that an anonymous tip established probable cause, and in *Alabama* v. *White*, 496 U.S. 325 (1990), reasonable suspicion, when the tips in those cases predicted suspects' future actions, thus suggesting a basis of knowledge, and officers corroborated those predictions, thus suggesting the veracity of the anonymous informants.

In *Florida* v. *J. L.*, 529 U.S. 266 (2000), in contrast, the Court held that an anonymous tip that a young black man, in a plaid shirt, was carrying a gun at a bus stop insufficiently showed the informant's basis of knowledge or veracity to supply reasonable suspicion. *Id.* at 270-271. While *J. L.* noted that the call did not "suppl[y] any basis for believing [the caller] had inside information," *id.* at 271, the Court did not suggest that inside information was the only permissible evidence of an informant's basis of knowledge or veracity. Rather, it held that reliance on the tip of gun possession was unwarranted under the circumstances of the case, where nothing at all in the report "explained how [the informant] knew about the gun" or otherwise signaled the informant's reliability. *Ibid.*

2. Under these principles, police who receive an anonymous 911 call reporting reckless or drunken driving may have reasonable suspicion for a brief stop when they corroborate the location and description of the vehicle that are set out in the call, even without observing additional reckless or drunken driving.

A caller's description of the details of a reckless or drunken driving episode—such as the appearance of the car involved, the swerving, speeding, or abrupt lane-changing that the caller witnessed, and the car's location and direction of travel—supports an inference that the caller's basis of knowledge is eyewitness observation. Details about the location and movement of a vehicle on a particular road are most naturally acquired by a person driving a car that is also on that road, suggesting that the caller has recently seen the vehicle in its travels.

And when responding officers readily verify the caller's description of a vehicle's color, make, license

plate, location, route, or other significant details, the tip is corroborated in the respects that justify reliance. That corroboration provides evidence of the caller's basis of knowledge, as a caller who accurately relays the description, location, and direction of a particular car is likely to have actually seen the car on the road. The corroboration also provides evidence of the caller's veracity, "'[b]ecause [when] an informant is right about some things, he is more probably right about other facts,' * * * including the claim regarding the [suspects'] illegal activity." *Gates*, 462 U.S. at 244 (internal citation omitted); see also *White*, 496 U.S. at 331 (same).

3. Petitioners suggest (Br. 21) that even if a caller proves accurate in saying that the caller just saw a particular vehicle on the road, an anonymous tip concerning a driving offense by that vehicle in public view cannot justify a traffic stop unless the tip contains "predictive or inside information, such as where the truck would be turning off or its final destination." But *Gates* and *White* did not treat an informant's possession of "predictive or inside information" as relevant for its own sake. Rather, those decisions treated inside information as relevant because it signaled that the informants in those cases had a basis of knowledge concerning the offenses they reported, even though the tipsters were reporting possession of items concealed from public view. See *Gates*, 462 U.S. at 244 (noting inside knowledge meant tipster might have "access to reliable information of the [suspects'] illegal activity"); *White*, 496 U.S. at 332 (deeming caller's correct predictions relevant because they provided "reason to believe not only that the caller was honest but also that he was well informed, at least well

enough to justify the stop"); cf. *J. L.*, 529 U.S. at 272 (finding tip deficient where it did "not show that the tipster ha[d] knowledge of concealed criminal activity"). It is an informant's possession of a basis of knowledge, not his possession of insider information as such, that this Court has treated as centrally important since its earliest cases concerning informant tips. See *Gates*, 462 U.S. at 230; *White*, 496 U.S. at 328; *Aguilar* v. *Texas*, 378 U.S. 108, 113-114 (1964), abrogated by *Illinois* v. *Gates*, 462 U.S. 213 (1983); *Spinelli* v. *United States*, 393 U.S. 410, 416-417 (1969), abrogated by *Illinois* v. *Gates*, 462 U.S. 213 (1983).

Inside information is of little relevance to the informant's basis of knowledge when a tipster is reporting a crime committed in public view. For a crime committed in public, "[n]o intimate or confidential relationship [i]s required to support the accuracy of the observation." *State* v. *Boyea*, 765 A.2d 862, 875 (Vt. 2000) (Skoglund, J., concurring), cert. denied, 533 U.S. 917 (2001). Rather, when the report itself indicates that the informant saw the events that the informant is describing, it establishes "the informant's basis of knowledge" as "eyewitness observations," such that "there is no need to verify that he possesses inside information." *United States* v. *Wheat*, 278 F.3d 722, 734 (8th Cir. 2001), cert. denied, 537 U.S. 850 (2002). In other words, status as an eyewitness signals the tipster's "access to reliable information about that individual's illegal activities," *White*, 496 U.S. at 332, and this establishes the same grounds for reliance—a tipster's basis of knowledge—that inside information established in *Gates* and *White*.

Petitioners' focus on inside information as the *sine qua non* of reliability would conflict with this Court's

precedents in other ways. First, an inflexible focus on whether an informant appeared to have information from one particular source cannot be reconciled with the principle that courts should not impose "[r]igid legal rules" for tips that "doubtless come in many shapes and sizes from many different types of persons," but should rather consider all the circumstances with an eye toward "the commonsense, practical question" of whether the tip, as corroborated, is reliable enough to support the intrusion at hand. *Gates*, 462 U.S. at 230, 232.

Second, privileging "inside information" over facts learned through eyewitness observation would be inconsistent with a long legal tradition that has treated eyewitness observation as a reliable basis for an informant's report. See, *e.g.*, *Williams*, 407 U.S. at 147 (contrasting tips "completely lacking in indicia of reliability" with case in which "the victim of a street crime seeks immediate police aid and gives a description of his assailant"); *Gates*, 462 U.S. at 234 ("[E]ven if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case."); *Spinelli*, 393 U.S. at 416 (suggesting that sufficient basis of informant's knowledge would have been established if "informant personally observed [suspect] at work" in gambling operation).

Indeed, eyewitness accounts of a contemporaneous or near-contemporaneous nature are often treated as particularly reliable evidence. Thus, rules of evidence in the federal courts and elsewhere provide that contemporaneous or near-contemporaneous eyewitness

statements may sometimes be admitted into evidence notwithstanding hearsay rules because such statements are regarded as particularly reliable. See David F. Binder, *Hearsay Handbook* § 8.1, at 253, 257 (4th ed. 2013-2014) (noting federal rule is premised on enhanced trustworthiness of such statements and further observing that "[p]retty clearly 911 emergency calls can fit the exception for present sense impressions"); see also 4 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 8.67, at 559, 568 (3d ed. 2007) (same). In sum, when officers corroborate a tip in a manner that signals that an informant has a basis of knowledge concerning the events he describes and has been truthful in some respects, the tip establishes reasonable suspicion for officers to conduct a brief investigative stop.

4. Technological developments have provided additional reasons to believe that anonymous 911 tips may well be reliable when the caller's words evidence an eyewitness basis of knowledge. Because the central concern surrounding anonymous informants is that callers may lie if they cannot be held to account for their statements, "the ability of the police to trace the identity of anonymous telephone informants may be a factor which lends reliability to what, years earlier, might have been considered unreliable anonymous tips." *J. L.*, 529 U.S. at 276 (Kennedy, J., concurring).

Many such technologies are now widely employed. Beginning in 2001, the Federal Communications Commission phased in requirements that cellular carriers transmit data concerning a caller's geographic location to 911 dispatchers at the time of a 911 call, see 47 C.F.R. 20.18(f)-(g), adding to existing identification requirements that carriers transmit a caller's

phone number to 911 operators, 47 C.F.R. 20.18(d)(1). And subscriber names and addresses, as well as the current and past whereabouts of a phone used to make a false report, can be obtained through judicial process. See 18 U.S.C. 2703(c)-(d).

Identification of callers is also possible through the recording of 911 calls, because while "it may be difficult for the authorities to locate a 911 caller solely by voice, the victim of a hoax" may well be able "to recognize the harassing caller's voice"—and will have every incentive to do so—"thus creating a reasonable possibility of prosecution for a false report" through such recordings. *People* v. *Dolly*, 150 P.3d 693, 699 (Cal.), cert. denied, 552 U.S. 828 (2007). Taken together, these technologies mean that even when 911 callers do not provide their names to dispatchers, they face the risk of exposure and possible prosecution for false reports, which are criminal in every State.[1]

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[1] See Ala. Code § 11-98-10 (LexisNexis 2008); Alaska Stat. § 11.56.800 (2012); Ariz. Rev. Stat. Ann. § 13-2907.01 (2010); Ark. Code Ann. § 5-54-122 (2005 & Supp. 2013); Cal. Penal Code §§ 148.3, 148.5 (West 1999); Colo. Rev. Stat. § 18-8-111 (2013); Conn. Gen. Stat. Ann. § 53a-180d (West 2012); Del. Code Ann. tit. 11, § 1245 (2007); D.C. Code § 5-117.05 (LexisNexis 2012); Fla. Stat. Ann. § 817.49 (West 2006); Ga. Code Ann. § 16-11-39.2(b) (2011); Haw. Rev. Stat. Ann. § 710-1014.5 (LexisNexis 2007); Idaho Code Ann. § 18-5413 (2004); 720 Ill. Comp. Stat. Ann. 5/26-1(a)(6) (Supp. 2013); Ind. Code Ann. § 36-8-16.7-46 (LexisNexis 2009); Iowa Code Ann. §§ 694.6 (West 2003), 718.6 (West 2010); Kan. Stat. Ann. § 21-3818 (1995); Ky. Rev. Stat. Ann. § 519.040 (LexisNexis 2008); La. Rev. Stat. Ann. § 14:403.3 (2004 & Supp. 2013); Me. Rev. Stat. Ann. tit 17-A, § 509 (2006); Md. Code Ann., Crim. Law § 9-501 (LexisNexis 2012); Mass. Ann. Laws ch. 269, § 13A (LexisNexis 2010); Mich. Comp. Laws Ann. §§ 750.411a, 750.509 (West 2004 & Supp. 2013); Minn. Stat. Ann. §§ 609.505, 609-5051 (West 2009); Miss. Code Ann. § 97-35-47 (West 2011 & Supp. 2013); Mo. Ann.

These technologies are well known to the public. See, *e.g.*, *United States* v. *Casper*, 536 F.3d 409, 415 n.5 (5th Cir. 2008) ("Instant caller identification is so pervasive today that no one fails to grasp that the police, who have long been able to trace a call, are able to capture the number and initiate a trace."), vacated on other grounds, 556 U.S. 1218 (2009); *State* v. *Golotta*, 837 A.2d 359, 367 (N.J. 2003) ("[I]n an expanding number of cases the 9-1-1 system provides the police with enough information so that users of that system are not truly anonymous even when they fail to identify themselves by name."). Increasing use of these mechanisms and increasing awareness of their availability likely deter false tips. These developments increase the justification for reliance on corroborated tips of reckless or drunken driving that omit a caller's name.

Stat. § 190.308 (West 2011); Mont. Code Ann. § 45-7-205 (2013); Neb. Rev. Stat. Ann. § 28-907 (LexisNexis 2009); Nev. Rev. Stat. Ann. § 207.280 (LexisNexis 2012); N.H. Rev. Stat. Ann. § 106-H:15 (LexisNexis 2012); N.J. Stat. Ann. § 2C:28-4 (West 2005); N.M. Stat. Ann. § 30-39-1 (2004); N.Y. Penal Law §§ 240.50, 240.55, 240.60 (McKinney 2008); N.C. Gen. Stat. § 14-111.4 (2011); N.D. Cent. Code § 12.1-11-03 (2012); Ohio Rev. Code Ann. § 2917.32 (LexisNexis 2010); Okla. Stat. Ann. tit 21, § 589 (West 2002 & Supp. 2013); Or. Rev. Stat. § 162.375 (2011); 18 Pa. Cons. Stat. Ann. § 4906 (West 1983 & Supp. 2013); R.I. Gen. Laws § 11-32-2 (2002); S.C. Code Ann. § 16-17-725 (2003); S.D. Codified Laws § 22-11-9 (2006); Tenn. Code Ann. § 39-16-502 (2011); Tex. Penal Code Ann. § 37.08 (West 2011 & Supp. 2013); Utah Code Ann. §§ 76-9-105, 76-9-202 (LexisNexis 2012); Vt. Stat. Ann. tit 13, § 1754 (2009); Va. Code Ann. § 18.2-429 (2009); Wash Rev. Code Ann. § 9A.84.040 (West 2009); W. Va. Code Ann. § 61-6-20 (LexisNexis 2010); Wis. Stat. Ann. §§ 256.35(10)(a) (West 2010 & Supp. 2013), 946.41 (West 2005 & Supp. 2013); Wyo. Stat. Ann. § 6-5-210 (2013).

B. The Compelling Public Interest In Stopping Drunken Driving, Balanced Against The Minimal Intrusion Of A Car Stop, Makes It Reasonable For Officers To Briefly Stop Cars Based On Corroborated Anonymous Tips

The compelling public interest in stopping drunken drivers currently on the road and the minimally intrusive nature of a brief car stop each weigh in favor of permitting officers to stop cars based on reports of reckless or drunken driving that are corroborated in their non-criminal details, instead of requiring officers to await further dangerous driving that could place lives at risk.

1. Because the "central inquiry under the Fourth Amendment" is "the reasonableness in all the circumstances" of a seizure, *Terry*, 392 U.S. at 19, an intrusion's constitutionality ultimately depends on a balancing of the governmental interests supporting the intrusion against the liberty and privacy interests onto which the seizure intrudes. See, *e.g.*, *Knights*, 534 U.S. at 118-119. Thus, this Court has regularly considered "the seriousness of the offense thought to be involved" in assessing "the substantiality of the law enforcement interest" and the reasonableness of police action. See 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(a), at 480 & n.45 (5th ed. 2012). *Graham* v. *Connor*, 490 U.S. 386, 396 (1989), for instance, held that "the severity of the crime at issue" was one factor to be considered in "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment." And *Welsh* v. *Wisconsin*, 466 U.S. 740, 753 (1984), concluded that "the gravity of the underlying offense" is "an important factor

to be considered when determining whether" an exigency that justifies home entry has been established. See also *United States* v. *Hensley*, 469 U.S. 221, 229 (1985) (holding that police may conduct *Terry* stops to investigate completed felonies, but reserving question whether same rule applies to less serious crimes).

This Court has suggested that investigative stops based on tips that do not contain ordinary "indicia of reliability" may be justified when the governmental interest served by the stop is particularly significant, see *J. L.*, 529 U.S. at 273 (stating that stops "without a showing of reliability" might be permitted based on "for example * * * a report of a person carrying a bomb"), or when the stop intrudes only on areas "where the reasonable expectation of privacy is diminished," *id.* at 274 (citing airports and schools as examples). Brief traffic stops based on corroborated reports of reckless or drunken driving present both of these considerations.

2. a. Given the grave and imminent harm threatened by drunken and reckless drivers, and the absence of reasonable investigative alternatives, the government has a strong interest in conducting a brief stop of a reportedly reckless or drunken driver when officers corroborate the innocent details of an anonymous 911 caller's report. This Court has repeatedly and recently recognized the "terrible toll" that drunken driving "continues to exact * * * on our society." *Missouri* v. *McNeely*, 133 S. Ct. 1552, 1565 (2013) (plurality). Despite "some [recent] progress," more than 9000 people are killed by drunken driving every year. See *ibid.* (citing 2011 data); *Virginia* v. *Harris*, 558 U.S. 978 (Roberts, C.J., dissenting from denial of certiorari) (almost 13,000 deaths, roughly one every 40

minutes, in 2007); *Begay* v. *United States*, 553 U.S. 137, 141 (2008). Hundreds of thousands more are injured in alcohol-related crashes annually. National Highway Traffic Safety Admin. (NHTSA), *Alcohol and Highway Safety: A Review of the State of Knowledge* 35 (Mar. 2011), http://www.nhtsa.gov/staticfiles/nti/pdf/811374.pdf (estimating 512,000 injuries in 2000). Such crashes also cost billions of dollars every year. NHTSA, *The Economic Impact of Motor Vehicle Crashes 2000* 2, 31-42 (May 2002), http://www-nrd.nhtsa.dot.gov/Pubs/809446.pdf (estimating cost of $51 billion in 2000). Given these hazards, this Court has recognized that the governmental interest in detecting and eliminating drunken driving is entitled to significant weight in Fourth Amendment analysis. See *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 447 (1990) (sanctioning random traffic stops at checkpoints to identify drunk drivers).

b. Both the federal and state governments have treated citizen reporting as critical to combatting these hazards. The National Transportation Safety Board has recommended that States adopt programs to encourage citizens to report impaired driving. See NHTSA, *Citizen Reporting of DUI-Extra Eyes to Identify Impaired Driving* 4-5 (Sept. 2006), http://www.nhtsa.gov/people/injury/alcohol/ExtraEyes/images/3204EEReport.pdf; NHTSA, *Safety Study—Deterrence of Drunk Driving: The Role of Sobriety Checkpoints and Administrative License Revocations* (Apr. 3, 1984). Many States have done so. See NHTSA, *Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement* (Mar. 2007), http://www.nhtsa.gov/links/sid/3674ProgramsAcrossUS/ (Programs That

Aid Motorists).[2] These collective efforts would be undermined by a rule requiring that before an investigatory stop, officers must observe a suspect repeat the dangerous conduct that elicited the citizen's report in the first place. Cf. *Gates*, 462 U.S. at 237-238 (rejecting stringent reliability standards that would render "anonymous tips * * * of greatly diminished value in police work" and "leave[] virtually no place for anonymous citizen informants").

c. Brief investigative stops of drivers reported to be engaged in reckless or drunken driving are particularly reasonable because the harm posed by such drivers is imminent, with the result that delays for further observation could put lives at risk. Since "a drunk driver maneuvering a thousand pounds of steel, glass and chrome down a public road" could cause

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[2] Amici curiae in support of petitioners incorrectly suggest that NHTSA's data shows "little cost" to requiring officers to personally witness illegal driving when they receive citizen tips through these reporting programs. NACDL Amicus Br. 16 (discussing Programs That Aid Motorists). NHTSA's data establishes that many States have programs to encourage citizen reporting of potentially impaired drivers, but NHTSA does not appear to have surveyed the rules that States use in conducting traffic stops under these programs. Simple comparison of reported arrest rates does not control for the many different variables that affect how often arrests are made, including but not limited to the quantity of law enforcement resources available to respond to tips and the extent of officers' training. A striking feature of NHTSA's data, however, is that among States collecting data on the relationship between tips and arrests, the most common response was that 26% to 50% of calls reporting impaired driving resulted in *arrests*. See Programs That Aid Motorists 53-62. This suggests that these tips may well demonstrate reliability that comes closer to meeting a probable cause standard than the much lower standard of reasonable suspicion.

mass casualties instantaneously, *Boyea*, 765 A.2d at 875 (Skoglund, J., concurring), many courts have appropriately treated such drivers as posing dangers closer to those of a bomb that could explode at any moment, cf. *J. L.*, 529 U.S. at 273-274, than to those posed by a person merely in possession of dangerous contraband. *Boyea*, 765 A.2d at 867 ("[A] drunk driver is not at all unlike a 'bomb,' and a mobile one at that."); *State* v. *Tischio*, 527 A.2d 388, 396 (N.J. 1987) (likening drunken drivers to "moving time bombs"), appeal dismissed, 434 U.S. 1038 (1988) (citation omitted). The imminent, serious risk makes it reasonable for police to respond quickly.

A prompt stop is all the more reasonable because absent a traffic stop, officers' only readily available method of "corroborating" a report of impaired or reckless driving would be to wait for further dangerous driving. Petitioners acknowledge as much, stating that the only corroboration that could justify a stop would be for an officer to observe a driving offense. See Pet. Br. 38 (contending that Fourth Amendment "requires corroboration of the dangerous driving itself"). But it is not reasonable to demand "corroboration" that would itself put lives at risk. See *Harris*, 558 U.S. at 980 (Roberts, C.J., dissenting from the denial of certiorari) (noting that "with drunk driving, such a wait-and-see approach may prove fatal").

d. Petitioners suggest (Br. 29-32) that the hazards of drunken driving are not appropriately considered here because the hazards of gun possession did not warrant exceptional treatment in *J. L.* But the imminent hazard posed by a drunken or reckless driver on the road contrasts sharply with the harms of possessory offenses like the one in *J. L.*, where "the contra-

band *could* pose a potential public risk," but the danger is not "particularly imminent." *Boyea*, 765 A.2d at 867; see also, *e.g.*, *Wheat*, 278 F.3d at 732 n.8. Furthermore, officers investigating possessory crimes have multiple methods available to seek corroboration without inviting harm. They may "surreptitiously observe the individual for a reasonable period of time," *Boyea*, 765 A.2d at 867, enhancing or dispelling suspicion through an individual's pattern of behavior, and may also choose to initiate a consensual encounter. "An officer in pursuit of a reportedly drunk driver on a freeway," however, "does not enjoy such a luxury," but must instead either stop the vehicle or wait for the driver to commit a further dangerous act. *Id.* at 868. A reasonableness calculus should not require officers to await the "one free swerve" that could be deadly. *Harris*, 558 U.S. at 981 (Roberts, C.J., dissenting from denial of certiorari).

Petitioners' amicus observes that dangerous driving does not uniformly result from alcohol impairment but may also stem from dangerous use of cellular phones and other hazards. See NACDL Amicus Br. 16-18. But brief traffic stops are the method that enables officers to determine whether a driver's recklessness stems from alcohol or drug-related impairment or from some other cause. And in any event, the dangers at issue are similar. This Court's cases recognize that cars driven aggressively pose significant dangers. See *Sykes* v. *United States*, 131 S. Ct. 2267, 2273-2274 (2011); *Scott* v. *Harris*, 550 U.S. 372, 383-386 (2007). Distracted driving poses similar risks. See, *e.g.*, Delthia Ricks, *Study: Texting Whiling Driving Now Leading Cause of Death For Teen Drivers* (May 8, 2013), http://www.newsday.com/news/nation/

study-texting-while-driving-now-leading-cause-of-death-for-teen-drivers-1.5226036 (describing study estimating 3000 teenage deaths and 300,000 injuries per year nationwide from texting while driving).

3. a. On the other side of the balance, the diminished privacy expectations of drivers on public roadways provide additional support for brief investigative stops in this context. *J. L.* itself suggested that an individual's privacy interests in a particular context were relevant to the reasonableness of an investigative stop. The Court singled out "quarters where the reasonable expectation of Fourth Amendment privacy is diminished" as locations at which it declined to rule out "protective searches on the basis of information insufficient to justify searches elsewhere." 529 U.S. at 274; see also *Terry*, 392 U.S. at 21 ("[T]here is no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.") (internal quotation marks and citation omitted; second and third set of brackets in original).

b. While *J. L.* specifically listed airports and schools as areas presenting diminished expectations of privacy, *ibid.*, cars on public roadways are analogous. Individuals have "a lesser expectation of privacy in a motor vehicle" both "because its function is transportation and it seldom serves as one's residence or as the repository of personal effects," and because cars "are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." *New York* v. *Class*, 475 U.S. 106, 112-113 (1986) (citation omitted); see also *California* v. *Carney*, 471 U.S. 386, 392 (1985); *Martinez-Fuerte*, 428 U.S. at 561. Traffic stops intrude

into this area only modestly, because while they interfere with motorists' freedom of movement, see *Prouse*, 440 U.S. at 657, they are brief in duration, see *Johnson*, 555 U.S. at 330, and are "typically less invasive than searches or seizures of individuals on foot," *Harris*, 558 U.S. at 981 (Roberts, C.J., dissenting from denial of certiorari).

The Court has relied on individuals' diminished expectations of privacy in vehicles as a factor relevant to the reasonableness of an intrusion in a variety of Fourth Amendment cases. See, *e.g.*, *Martinez-Fuerte*, 428 U.S. at 558-562; *Carney*, 471 U.S. at 392. Indeed, the Court has relied on this diminished expectation of privacy, coupled with the strength of the government's interest in preventing drunken driving, to hold that absent any individualized suspicion, uniformed officers may conduct vehicle stops at checkpoints designed to identify drunk drivers. *Sitz*, 496 U.S. at 451-453. Just as the strength of the governmental interest and "slight" nature of the intrusion justify brief checkpoint stops to combat drunken driving even absent any individual suspicion, *id.* at 451, so too that balancing of interests supports brief patrol stops to combat drunken driving when officers do have individual suspicion.

C. Petitioners' Arguments For A Contrary Approach Are Not Consistent With This Court's Precedents

1. Petitioners' arguments for a contrary approach (Br. 11, 34) rest to a large extent on concerns that some anonymous tipsters may make false reports to law enforcement officers. But because a tip must provide evidence that the caller just saw the vehicle in question firsthand—by describing the vehicle's location and appearance—a malicious prankster could not

generate a stop at will by calling in a tip regarding a person they dislike. See *J. L.*, 529 U.S. at 272. And since a brief stop of a vehicle for investigation requires only reasonable suspicion of criminal activity—a showing far less than a preponderance of the evidence, and less than probable cause—reasonable suspicion is not eliminated by the possibility that some individuals will make false reports. While this Court's cases recognize the possibility of false anonymous tips, they also recognize that many anonymous reports are truthful. See, *e.g.*, *Gates*, 462 U.S. at 237-238 (noting that anonymous tips, "particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes'"). After all, calls may be anonymous for a variety of innocent reasons. See, *e.g.*, *United States* v. *Madrid*, 713 F.3d 1251, 1260 (10th Cir. 2013) (police dispatcher forgot to ask name); *United States* v. *Torres*, 534 F.3d 207, 212 (3d Cir. 2008) (same); *Commonwealth* v. *Costa*, 862 N.E.2d 371, 377 (Mass. 2007) (noting that some callers "justifiably may be concerned for their own safety if their identity becomes known to the persons subsequently investigated or arrested").

As described above, the Court has traditionally balanced these considerations by permitting the modest intrusion of an investigative stop when a particular tip displays indicia of reliability—such as basis of knowledge and veracity—rather than by treating anonymous tips as categorically unworthy of reliance. Indeed, it has done so over a dissent arguing, just as petitioners do here, that the risk that some anonymous tips would be fabricated counseled against using them to establish reasonable suspicion. See *White*,

496 U.S. at 333 (Stevens, J., dissenting). The Court's approach balances the risks of reliance on false tips against the strong societal interest in acting upon genuine ones.

Here, a context-specific analysis accounts for the strong public interest in halting criminal activity that poses an imminent risk of loss of life while also weighing citizens' interest in avoiding even brief traffic stops based on false tips. And by analyzing the reliability of identified and anonymous tips case-by-case, this approach also appropriately recognizes that a caller's supplying a name does not guarantee that the caller can be identified, see *United States* v. *Watson*, 558 F.3d 702, 703 (7th Cir. 2009) (noting that names "may be fake"), while a caller's withholding a name does not guarantee that the caller will remain anonymous, see *J. L.*, 529 U.S. at 275-276 (Kennedy, J., concurring).

2. Finally, contrary to petitioners' suggestions (Br. 13, 28, 35), the approach taken by a majority of lower courts does not amount to an "automatic" rule authorizing a traffic stop any time an unnamed caller reports a driving infraction. Those courts' cases instead illustrate a totality-of-the-circumstances approach. See, *e.g.*, Pet. App. 15, 23-24; *Wheat*, 278 F.3d at 732 n.8, 737; *People* v. *Wells*, 136 P.3d 810, 812, 816 (Cal. 2006), cert denied, 550 U.S. 937 (2007). This approach permits courts to weigh factual variations that may bolster or undermine the case for reasonable suspicion in particular instances. For example, courts commonly consider the level of detail supplied by a caller as relevant to whether a report appeared to be a reliable eyewitness account. Compare *Wheat*, 278 F.3d at 737 (upholding stop based on tip containing "extensive

description of a vehicle" and "specific examples of moving violations"), with *State* v. *Kooima*, 833 N.W.2d 202, 210-211 (Iowa 2013) (rejecting stop based on tip of drunken driving when caller did not relay any "personal observation of erratic driving"), petition for cert. pending, No. 13-393 (filed Sept. 24, 2013). Some courts have further suggested that not just any report of a traffic violation will do; whereas "[a]n allegation of erratic driving" or youths "drag racing or [playing] a game of 'chicken'" may suffice, a call reporting slight speeding or a failure to use a turn signal may not. See *Wheat*, 278 F.3d at 732 n.8. Courts have likewise treated the length of time that passed between the citizen's report and the stop of a vehicle, *id.* at 737 n.13, and whether a responding officer saw a moving violation, see *Wells*, 136 P.3d at 816, as relevant considerations. Courts' ability to weigh all these considerations in determining whether a stop was reasonable ensures that not every anonymous report of a traffic violation ends in a car stop.

Petitioners' approach, in contrast, would impose a categorical rule that is hard to square with a totality-of-the-circumstances analysis, by making future predictions the sole acceptable index of reliability in cases where officers do not witness criminal activity themselves. Such an approach would find tips inadequate even when, for example, a caller placed multiple calls to update the police on ongoing developments, see, *e.g.* *United States* v. *Copening*, 506 F.3d 1241, 1246 (10th Cir. 2007), cert. denied, 554 U.S. 905 (2008), described the caller's relationship with the crime victim or offender, see, *e.g.*, *United States* v. *Brown*, 496 F.3d 1070, 1075-1077 (10th Cir. 2007); *United States* v. *Elston*, 479 F.3d 314, 315 (4th Cir.), cert. denied 550

U.S. 927 (2007); *United States* v. *Terry-Crespo*, 356 F.3d 1170, 1174 (9th Cir. 2004), or described learning of the criminal conduct through a particular job, thereby signaling a basis of knowledge and narrowing the class of possible informants, see *Torres*, 534 F.3d at 211. And no matter the danger, officers confronted with facts similar to those in *Elston*—an unnamed woman's phoned-in report that an intoxicated driver had recently left her home after threatening to shoot somebody with the loaded gun in his truck—would presumably be unable to stop a truck matching the description until they observed impaired driving or saw the driver wield his gun. See 479 F.3d at 315-316. The Fourth Amendment, whose "ultimate touchstone" is always "reasonableness," *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006), does not require that result.

D. The California Court Of Appeal Correctly Concluded That The Report In This Case Justified A Traffic Stop.

Under a totality-of-the-circumstances approach, the California Court of Appeal correctly determined that the stop of petitioners' truck was supported by reasonable suspicion. The 911 call indicated that the caller was an eyewitness to reckless driving, as the caller reported that she had been run off the road by petitioners' truck. Moreover, the caller provided a detailed description of the vehicle (a silver Ford F-150 pick-up truck with a particular license plate), its location (near mile marker 88) and its direction of travel (southbound on Highway 1). See Pet. App. 4. Once the officers confirmed the presence of a car matching this description near the location described, they could reasonably conclude that the caller had an adequate basis of knowledge as an eyewitness and could assign some weight to the caller's veracity given the

officers' corroboration of reported details. In addition, since the caller did not relay a conclusory assertion of reckless driving but rather described particular dangerous conduct, *ibid.*; J.A. 74a, officers could reasonably conclude that the caller had witnessed the type of serious moving violation that supports a prompt law enforcement response to avert serious danger. See *Wheat*, 278 F.3d at 732 n.8.

As the court below acknowledged, two related considerations weighed somewhat against a finding of reasonable suspicion. The officers did not pull over petitioners' vehicle immediately, and they did not witness additional dangerous driving during their "brief observation of the vehicle." Pet. App. 23. These factors are relevant, but the court of appeal soundly concluded that neither factor dispelled reasonable suspicion under the particular circumstances here. *Id.* at 24. The five-minute period in which the officers observed no additional dangerous driving was not one of uninterrupted observation, but rather one in which the officers were making U-turns and attempting to catch up to petitioners' truck. *Ibid.* Moreover, "[m]otorists who see a patrol car may be able to exercise increased caution." *Wells*, 136 P.3d at 816. Accordingly, given the "several indicia of reliability" contained in the tip, officers acted reasonably in conducting a brief traffic stop rather than permitting petitioners to continue driving along an undivided two-lane highway until the officers observed dangerous conduct themselves. Pet. App. 24.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

Lorenzo Prado NAVARETTE, Jose Prado NAVARETTE, *Petitioners*,

v.

State of CALIFORNIA, *Respondent*.

On Writ of Certiorari to the
California Court of Appeal,
First Appellate District

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QUESTION PRESENTED

Whether the Fourth Amendment requires an officer who receives an anonymous tip regarding an impaired or reckless driver to personally observe dangerous driving before stopping the vehicle.

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INTEREST OF AMICI CURIAE

Over the past several decades, Amici States have relentlessly attacked the epidemic of drunk or impaired driving. The States' substantial efforts have included legislative action, educational programs, increased vigilance and enforcement, and an enhanced overall public commitment to saving lives by ridding the roadways of impaired drivers. States have raised the drinking age and lowered the legal limits of blood alcohol content. They have imposed substantially stiffer penalties, even for first time offenders. And they have aggressively enforced their laws by employing sobriety checkpoints and other law enforcement programs.

Despite these efforts, drunk driving fatalities still top 10,000 nearly every year, and the number of non-fatal injuries is even higher. Together, these accidents cost the States billions of dollars annually—all on top of the immeasurable non-economic toll. Notwithstanding States' substantial progress, people still break the law. And because police officers cannot be everywhere, States have turned to their citizens for help. Most all States have launched campaigns to raise awareness of drunk driving and to educate their citizens on how to identify impaired drivers. Many States provide a designated DUI "hotline" for tips from citizens who spot impaired drivers. When callers provide details about the suspected vehicle and its location, police officers may then quickly locate and stop the vehicle, preventing potentially fatal consequences.

State Amici's interest is in protecting their citizens from the dangers of drunk and reckless driving. The States have a substantial interest in ensuring that they can do so effectively, which includes maximizing law enforcement officers' ability to act on credible citizen tips, regardless of whether the officers personally witness any inordinate behavior. If officers are required instead to allow suspected drivers "one free swerve," then the States' efforts to eradicate drunk driving will be frustrated, and more citizens will be subject to its devastating consequences.

SUMMARY OF THE ARGUMENT

Drunk driving continues to be a serious problem in the United States despite decades of public and private efforts to eradicate it. Although tremendous progress has been made, and although the instance of drunk driving fatalities has decreased, there is still much work to be done. Continuing their efforts, States have implemented a variety of programs that have contributed to the decrease in alcohol-related accidents. In recent times, these State campaigns to stamp out drunk driving have included enlisting the public's help.

Police officers cannot personally observe and stop every drunk driver, but with the public's help, they have a much greater chance of locating them. For that reason, many States have created DUI hotlines, which they promote through creative and varied marketing techniques, to encourage the public to call—anonymously or not—and report drivers they believe may be impaired. These programs are important tools, as they give officers multiple sets of eyes that can direct them to dangerous situations. Through these programs, law enforcement has a better chance of not only apprehending lawbreakers but, more importantly, preventing fatal accidents before they occur.

Upholding the practice of briefly stopping vehicles suspected of drunken driving, even when an officer does not personally witness erratic driving, is consistent with this Court's precedent and its shared concern over the harms of impaired driving. Indeed, the Court has previously noted that the danger posed

by drunk driving is unique, justifying many anti-drunk-driving state policies, such as sobriety checkpoints and random tests for alcohol, which could be constitutionally questionable under other circumstances. The practice challenged here is similarly justified.

Florida v. J.L. left open the question of what circumstances constitute a danger "so great" as to justify a search based on an anonymous tip. 529 U.S. 266, 273 (2000). But the majority of courts following *J.L.* have concluded that drunk driving creates exactly the type of "great" danger the Court envisioned. Most courts have therefore upheld traffic stops based on anonymous tips when the caller provides detailed information describing the vehicle, its license plate number, and its location, and when an officer is able to timely locate the vehicle based upon this information. It is simply not necessary for an officer to personally witness any erratic driving behavior because "one free swerve" could be fatal.

As many courts have found, nothing in *J.L.* is inconsistent with the decision below. A traffic stop is much less intrusive than the public frisking at issue in *J.L.* Moreover, an impaired driver poses a threat of imminent harm unlike someone accused solely of possessing a firearm. The minimal intrusion of a brief traffic stop is substantially outweighed by the government's interest in protecting citizens from the danger of impaired drivers.

For those reasons, the Court should approve the decision below and hold that an officer who receives an anonymous tip of drunk or erratic driving does not

violate the Fourth Amendment by briefly stopping the vehicle, even without personally witnessing any reckless driving.

ARGUMENT

I. DRUNK DRIVING IS A SUBSTANTIAL PROBLEM THAT STATES HAVE WORKED TIRELESSLY TO ERADICATE.

More than one *hundred* million times each year, adults drive after drinking too much. That is more than 300,000 instances of drinking and driving each day. *See* Statistics, Mothers Against Drunk Driving.[1] Those instances have devastating consequences: every three hours in the United States, drunk driving claims the life of someone who was not driving drunk. *See* Press Release, Nat'l Highway Traffic Safety Admin. (NHTSA), *U.S. Transportation Secretary Foxx Launches 'Drive Sober or Get Pulled Over' Crackdown*, OST. 71-13 (Aug. 22, 2013).[2] In 2011, nearly 10,000 people—equal to 27 people per day or one person every 53 minutes—died in drunk-driving crashes, and more than one third of those killed were not drunk drivers. *Id.* Of those victims, "1,612 were passengers in a drunk driver's vehicle, many of them too young to

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[1] http://www.madd.org/statistics/ (last visited Dec. 23, 2013) (citing Centers for Disease Control and Prevention, October 2011).

[2] http://www.nhtsa.gov/About+NHTSA/Press+Releases/2013/U.S.+Transportaion+Secretary+Foxx+Launches+'Drive+Sober+or+Get+Pulled+Over'+Crackdown (last visited Dec. 23, 2013).

drive, including 91 children under the age of 15 years old; 1,049 were motorists [and] 710 were pedestrians or bicyclists." *Id.* Those figures increased in 2012, as NHTSA recently confirmed 10,322 fatalities in drunk-driving crashes in 2012 compared to 9,865 in 2011. *See* Press Release, NHTSA, *NHTSA Data Confirms Traffic Fatalities Increased In 2012*, NHTSA 32-13 (Nov. 14, 2013).[3] Non-fatal injuries in crashes involving alcohol were significantly higher, too. And beyond the human toll, "[a]lcohol-impaired motor vehicle crashes cost more than an estimated $37 billion annually." NHTSA, *Impaired Driving: Did You Know?*[4]

Although these numbers are astounding, they actually represent an improvement. There has been, for example, a 52% decrease in fatalities since 1982. *See* U.S. Dep't of Transp. NHTSA, *Total Fatalities in Drunk-Driving Crashes* (2010).[5] Although some of the decrease may be attributed to improved automobile safety design, national educational campaigns by groups like Mothers Against Drunk Driving (MADD), and other causes, significant credit belongs to the States and their persistent efforts over the past decades.

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[3] *available at* http://www.nhtsa.gov/About+NHTSA/Press+Releases/NHTSA+Data+Confirms+Traffic+Fatalities+Increased+In+2012.

[4] http://www.nhtsa.gov/Impaired (last visited Dec. 23, 2013).

[5] http://www.alcoholstats.com/uploads/DrunkDrivingStatistics.pdf (last visited Dec. 23, 2013).

As drinking and driving accidents increased, States responded with legislative enactments and state-funded programs to address drunk driving. Local communities and private organizations also participated with their own programs. "These alcohol programs and laws served as a general deterrent to all those who drink and drive by sending a message that the States were getting tougher on impaired driving and hence, these efforts made people think twice about getting behind the wheel after they had been drinking." U.S. Dep't of Transp., NHTSA, *Statistical Analysis of Alcohol-Related Driving Trends, 1982-2005*, p. v (May 2008).

Over the last twenty years, most States have enacted four aggressive types of legislation: (1) sharp reductions in the legal BAC limits; (2) mandatory license revocation for drivers who refuse to submit to or fail a BAC test; (3) a minimum drinking age of 21; and (4) zero-tolerance laws that make it illegal for those under 21 to operate a vehicle with a BAC level of .02 or more. *Id.* at vii. States have also increased penalties for violating drunk-driving laws. Forty-three States now employ automatic license revocation, even for first-time offenders. *See* MADD, Fifth Anniversary Report to the Nation, *State-By-State Summary* 15-27 (2012).[6] Many States also require first-time offenders to install ignition interlock devices. *Id.* And thirty-eight states now regularly conduct sobriety checkpoints, "the primary method through which law enforcement protects the public from drunk drivers." *Id.* at 5.

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[6] *available at* http://www.talklikemadd.org/books/statereport/.

In addition, many State and local governments have launched campaigns to educate the public on how to spot impaired drivers and to encourage all citizens to report such drivers, *anonymously or not*. For example:

- The Florida Highway Patrol set up a designated hotline (*FHP) that motorists may call to aid law enforcement in apprehending impaired drivers. *See* NHTSA, *Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement* (hereinafter "NHTSA Programs").[7]

- Lee County, Florida has a program called "Mobile Eyes" that awards citizens cash when their calls result in DUI arrests. *Id.*

- Ohio's Public Safety Department has a published full-color flyer detailing the serious consequences of drunk driving, providing tips for detecting impaired drivers, and promoting a toll-free designated line (1-800-GRAB-DUI) for reporting impaired drivers. *See* Ohio Dep't of Pub. Safety, *Impaired Driving Costs Us All.*[8]

- An Illinois citizens' group operates a program called "Drunk Buster," which awards $100.00 to callers whose reports to the State hotline or

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[7] http://www.nhtsa.gov/links/sid/3674ProgramsAcrossUS/pages /Florida.html (last visited Dec. 23, 2013).

[8] http://www.publicsafety.ohio.gov/links/HSY7737.pdf (last visited Dec. 23, 2013).

9-1-1 result in arrests. *See* NHTSA Programs, *supra* (Illinois).

- The Colorado State Patrol launched a campaign to encourage citizens to report drivers who appear to be impaired. *See* Colorado State Patrol, *Report DUI.*[9] The State set up a special reporting hotline, and it published directions for callers to provide the dispatcher with the exact location of the vehicle, a complete description of the vehicle and its operation. *Id.* The publication emphasizes that all calls are free and "may save a life—or many lives." *Id.*

- As part of its 2007 DUI Enforcement Crackdown, California published the "*Spotting & Reporting Drunk Drivers Tip Sheet.*"[10] The first tip is to "[c]all 911 and tell them you wish to report a drunk driver. *You do not have to give your name.*" *Id.* (emphasis added). It then tells the reader to give the 9-1-1 operator (1) the location of the vehicle, including the cross streets and direction the vehicle is travelling; (2) a complete description of the vehicle; and (3) a description of the manner in which the vehicle is being driven. *Id.*

- Both Idaho and Nebraska launched a REDDI (Report Every Drunk Driver Immediately) pro-

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[9] http://www.colorado.gov/cs/Satellite/StatePatrol-Main/CBON/1251594512030 (last visited Dec. 23, 2013).

[10] http://www.abc.ca.gov/news/dui_prevention/report_drunk_drivers_tip_sheet.pdf (last visited Dec. 23, 2013).

gram. *See id.*, (Idaho & Nebraska). Those States continuously promote the program on permanently installed highway signs, state maps, news releases, radio, television, and other promotional items. *Id.*

- At least 28 States now have a designated DUI Hotline, which they encourage citizens to use to report seemingly impaired drivers. *See* MADD, *Someone You Know Drinks and Drives, Reporting a Drunk Driver*, 20.[11] Many States advertise these hotlines on permanent highway signs, billboards, television, radio, State maps, and by other means. *See* NHTSA Programs, *supra*. These special hotlines provide additional resources for concerned citizens who may wish to report an incident but may hesitate to dial 9-1-1.[12]

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[11] *available at* http://www.madd.org/victim-services/finding-support/victim-resources/someone-you-know-drinks-and.pdf (listing DUI Hotline numbers for CA, CO, FL, GA, ID, IL, KS, KY, ME, MD, MA, MS, NV, NH, NJ, NM, NY, NC, OH, OR, RI, SC, TN, TX, VA, WA, WV, WY).

[12] Other private entities have launched similar programs. For example, State Farm Insurance Company published *Tips to Prevent Drinking and Driving*, which includes a section on how to detect a drunk driver and directs readers to call 9-1-1 if they spot what they believe is an impaired driver. http://learningcenter.statefarm.com/safety-2/auto-2/tips-to-prevent-drinking-and-driving/ (last visited Dec. 18, 2013). The DUI Foundation's publication "Reporting Drunk Drivers," also directs concerned citizens to report drivers who appear to be driving under

By establishing these reporting hotlines and other programs, the States have made clear that they need their citizens' assistance, *anonymously or not*, to aid their efforts to combat drunk driving. Police officers cannot be everywhere, but by enlisting the public's help, they can be more effective. Without personally having to observe any erratic driving, police officers can sufficiently verify the innocent details of a hotline or 9-1-1 tip—such as the make, model, license plate number, and the location of the suspect vehicle—and they can then safely stop the vehicle *before* any harm occurs.

II. STOPPING A CAR BASED ON AN ANONYMOUS TIP OF IMPAIRED DRIVING IS CONSISTENT WITH THIS COURT'S PRECEDENT.

A. This Court Has Long Recognized the Dangers of Drunk Driving and the States' Interest in Eradicating It.

The seriousness of drunk driving has not been lost on this Court. As the Court recognized in *Michigan Department of State Police v. Sitz*:

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the influence by calling the proper authorities, giving the location and direction of the vehicle, the make model and color of the car and the license plate; and it assures the reader that "[t]here is no need to feel guilty when you could be saving ... the lives of others. *If you wish to make the call anonymously, that is always an option*. In this very serious situation, it is always better to be safe than sorry." http://www.duifoundation.org/support/prevention/reporting/ (last visited Dec. 23, 2013) (emphasis added).

> No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage.

496 U.S. 444, 451 (1990) (footnotes, citations, and quotation marks omitted); *accord S. Dakota v. Neville*, 459 U.S. 553, 558 (1983) ("This Court, although not having the daily contact with the problem that the state courts have, has repeatedly lamented the tragedy.").

Recognizing this danger, the Court has consistently rejected challenges to State efforts to combat drunk driving. *See Virginia v. Harris*, 558 U.S. 978 (2009) (Roberts, C.J., dissenting from denial of certorari). In *Sitz*, for example, the Court upheld a sobriety checkpoint program designed to identify intoxicated drivers. 496 U.S. at 447. All drivers were forced to stop at the checkpoints, regardless of any individualized suspicion. *Id.* If drivers showed no signs of intoxication, they "would be permitted to resume their journey immediately." *Id.* If they did show signs of intoxication, officers would direct them to a separate location for further investigation. *Id.* The Court recognized "that a Fourth Amendment 'seizure' occurs when a vehicle is stopped at a checkpoint," but it upheld the program because "the State's interest in

preventing drunken driving" outweighed the slight intrusion on motorists only briefly stopped. *Id.* at 455

The Court's decision in *Sitz* did not open the door to law enforcement checkpoints generally; the sobriety checkpoint program was permissible precisely because of the special needs associated with drunk driving. Indeed, in invalidating a checkpoint program designed to address drug trafficking, this Court distinguished *Sitz*, explaining that "[t]he gravity of the drunk driving problem and the magnitude of the State's interest in getting drunk drivers off the road weighed heavily in our determination that the [sobriety checkpoint] program was constitutional." *City of Indianapolis v. Edmond*, 531 U.S. 32, 39 (2000).[13]

Drug trafficking—the harm at issue in *Edmond*—is no doubt a serious problem, too. But unlike a drug trafficking checkpoint, the purpose of stopping a po-

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[13] To be sure, this Court has found checkpoint stops less intrusive than other traffic stops. *See, e.g., United States. v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976) ("[W]e view checkpoint stops in a different light because the subjective intrusion the generating of concern or even fright on the part of lawful travelers is appreciably less in the case of a checkpoint stop."). But even if a traffic stop is more intrusive than a checkpoint stop, the intrusion is still slight, *see infra*, and it does not outweigh the substantial governmental interest in removing impaired drivers from the road. Moreover, the stops at issue do not involve "standardless and unconstrained discretion," *Sitz*, 496 U.S. at 454 (quoting *Delaware v. Prouse*, 440 U.S. 648, 661 (1979)) because unlike random stops, the stop in this case was a direct response to a specific report of reckless driving.

tentially drunk driver is not limited to uncovering evidence of ordinary criminal wrongdoing or for general crime control. Instead, sobriety checkpoints serve public safety purposes, independent of prosecuting crimes. The program in *Sitz* "was clearly aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was an obvious connection between the imperative of highway safety and the law enforcement practice at issue." *Edmond*, 531 U.S. at 39; *see also id.* at 43 ("Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate."). Similarly, in *Delaware v. Prouse*, the Court suggested that a checkpoint to check drivers' licenses and registrations may be permissible. 440 U.S. 648, 664 (1979). Like sobriety checkpoints, license and registration checkpoints serve purposes "distinct from a general purpose of investigating crime." *Edmond*, 531 U.S. at 39 ("Not only does the common thread of highway safety thus run through *Sitz* and *Prouse*, but *Prouse* itself reveals a difference in the Fourth Amendment significance of highway safety interests and the general interest in crime control.").

Beyond the checkpoint context, the Court has upheld other suspicionless searches when justified by "special needs, beyond the normal need for law enforcement." *Id.* (citing *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (upholding random drug testing of student-athletes because of the school's special need to ensure student safety); *Treasury Emps. v. Von Raab*, 489 U.S. 656 (1989) (upholding drug tests for employees seeking certain job positions); *Skinner*

v. Ry. Labor Exec. Ass'n, 489 U.S. 602 (1989) (upholding drug and alcohol tests for employees involved in train accidents)).

And even beyond the Fourth Amendment context, this Court has recognized the unique danger posed by drunk drivers in upholding other drunk-driving policies—policies that may otherwise have been "constitutionally problematic." *See Harris*, 558 U.S. at 978 n.1 (Roberts, C.J., dissenting from denial of certiorari). For example, this Court upheld a state law that automatically suspended a driver's license when a driver refused to submit to a breath test. *Mackey v. Montrym*, 443 U.S. 1, 17-19 (1979). Applying the *Eldridge* balancing test[14] and rejecting a due process challenge, the Court noted "the paramount interest the Commonwealth has in preserving the safety of its public highways." *Id.* at 17. The Court specifically noted the law's value in deterring drunken driving as well as "promptly removing [impaired] drivers from the road." *Id.* at 18; *see also South Dakota v. Neville*, 459 U.S. 553, 554, 558, 560 (1983) (upholding state law allowing a defendant's refusal to take a blood-alcohol test to be introduced as evidence against him at trial and noting that "[t]he situation underlying this case—that of the drunk driver—occurs with tragic frequency on our Nation's highways.").

The traffic stops at issue here unquestionably serve critical state interests that are not exclusively for law enforcement, namely protecting the public from the recognized harms of impaired drivers.

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[14] *See Matthews v. Eldridge*, 424 U.S. 319 (1976).

B. This Court's Decision in *Florida v. J.L.* Does Not Undermine the Decision Below.

Petitioners rely heavily on this Court's decision in *Florida v. J.L.*, which held that an anonymous tip that a person was carrying a gun, without more, was insufficient to justify an officer's stop and frisk. 529 U.S. 266, 268 (2000). Nothing in that decision, or the decisions preceding it, invalidates the decision below.

J.L. followed a series of decisions in which this Court considered the extent to which citizens' tips can justify Fourth Amendment searches or seizures. In *Adams v. Williams*, this Court rejected the contention that a *Terry* stop must be based on an officer's personal observations. 407 U.S. 143 (1972) (discussing *Terry v. Ohio*, 392 U.S. 1 (1968)). It instead held that a valid stop could be based on information gleaned from a third person—in Adams' case, a known informant. *Id.* at 144-45. Later, in *Alabama v. White*, the court expanded *Adams*, concluding that an anonymous tip may also form the basis for an investigatory stop. 496 U.S. 325, 328 (1990). This is true, the Court found, when (1) the anonymous tip is specific enough to indicate that it is probably based on first-hand knowledge; (2) it accurately predicts the suspect's future behavior, and (3) the innocent, non-criminal details can be corroborated by the police.

This Court then decided *J.L.*, in which it rejected a proposed firearm exception to the requirement that an anonymous tip accurately predict the suspect's future (as opposed to ongoing) activities. In *J.L.*, the Court held that an anonymous tip asserting that a

young man wearing a plaid shirt would be at a specific bus stop at a certain time and that he would be carrying a firearm—even if all the innocent, non-criminal details of the tip were corroborated—is insufficient to provide the reasonable suspicion for an investigatory stop. 529 U.S. at 268. The Court explained that although the tip was reliable as to identification, it was not indicative of the likelihood of criminal activity. *Id.* at 272. And the Court refused to justify the stop based on the dangers of firearms generally, reasoning that it could not "securely confine such an exception to allegations involving firearms." *Id.* Instead, "[i]f police officers may properly conduct *Terry* frisks on the basis of bare-boned tips about guns, it would be reasonable to maintain ... that the police should similarly have discretion to frisk based on bare-boned tips about narcotics." *Id.* at 273.

Nothing in *J.L.* is inconsistent with the principle that law enforcement can rely on anonymous tips to remove drunk drivers from the highways, because none of the dangers associated with drunk driving were present in *J.L.* In fact, the Court expressly noted that "[t]he facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability." *Id.* The stop and frisk at issue there was exclusively for ordinary law enforcement purposes—not to remove an immediate threat such as that posed by drunk drivers. *See Harris*, 558 U.S. at 978 (Roberts, C.J., dissenting from denial of certiorari) ("In a case like *J.L.*, the police can often observe the subject of a tip and step in before actual harm occurs; with drunk

driving, such a wait-and-see approach may prove fatal.").

When stopping a suspected drunk driver, by contrast, police officers act not only to investigate wrongdoing, but also in their related public safety role of "reducing the immediate hazard posed by the presence of drunk drivers on the highways." *Edmond*, 531 U.S. at 39; *see also generally Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009); *State v. Marcello*, 599 A.2d 357 (Vt. 1991) (upholding investigative stop of a vehicle based upon a citizen report stating "there's something wrong with that man"); *Provo City v. Warden*, 844 P.2d 360 (Utah Ct. App. 1992) (upholding admission of evidence from an investigatory stop under the community caretaker function under "circumstances threatening life or safety"). And police *should* have greater latitude to stop vehicles to check for impaired drivers than to check for evidence of other crimes, because with the former, they are also protecting the public from immediate harm. Not all erratic driving is criminal; not all swerving drivers are drunk. A car might swerve because its driver is suffering seizures, falling asleep, otherwise incapacitated. Those instances, even if not criminal, pose an imminent threat to public safety. If officers are required to grant a driver "one free swerve," many times, that swerve will be costly. *See Harris*, 558 U.S. at 978 (Roberts, C.J. dissenting from denial of certiorari).

In *J.L*, the Court also expressed concern that a broad "firearm" exception would "enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted

person simply by placing an anonymous call." *Id.* at 272. That concern is not present here, because a routine traffic stop is not embarrassing, and any intrusion is minimal. *Cf. Berkemer v. McCarty*, 468 U.S. 420, 437 (1984) ("A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way."); *Colorado v. Bertine*, 479 U.S. 367, 372 (1987) (noting "the diminished expectation of privacy in an automobile").

Finally, the Court distinguished the anonymous tip in *J.L.* from a tip delivered by an informant "who can be held responsible if her allegations turn out to be fabricated." 529 U.S. at 270 (citing *Adams*, 407 U.S. at 146-47. Current technology makes it less likely that an "anonymous tip" is truly anonymous. As Justice Kennedy noted, "the ability of the police to trace the identity of anonymous telephone informants may be a factor which lends reliability to what, years earlier, might have been considered unreliable anonymous tips." *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring). Today, calls to authorities do not have the same level of anonymity they once did; 911 calls are routinely recorded, and the location of cellular telephones is routinely transmitted. *See, e.g.*, FCC Encyclopedia, 911 and E911 Services[15] ("The FCC also requires wireless telephone carriers to provide 9-1-1

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[15] http://www.fcc.gov/encyclopedia/9-1-1-and-e9-1-1-services (last visited Dec. 23, 2013).

and E9-1-1 capability, where a Public Safety Answering Point (PSAP) requests it. Once it is implemented fully, wireless E9-1-1 will provide an accurate location for 9-1-1 calls from wireless phones.").

This technology is well known, and a person calling in a reckless driving tip most likely understands that he "places his anonymity at risk," which lends reliability to the tip. *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring); *see also, e.g.*, *United States v. Copening*, 506 F.3d 1241, 1247 (10th Cir. 2007) ("[T]hough the caller declined to provide his name, he called 911 from an unblocked telephone number [and] should have expected that 911 dispatch tracks incoming calls and that the originating phone number could be used to investigate the caller's identity. The fact the caller provided authorities some basis for discovering his identity makes it is less likely his tip was phony." (citation omitted)); *Com. v. Costa*, 862 N.E.2d 371, 377 (Mass. 2007) ("By providing information to the police after knowing that her call was being recorded, and that the number she was calling from had been identified, we conclude that the caller placed her anonymity sufficiently at risk such that her reliability should have been accorded greater weight than that of an anonymous informant."); James Michael Scears, Comment, *Anonymous Tips Alleging Drunk Driving: Why "One Free Swerve" Is One Too Many*, 64 Okla. L. Rev. 759, 794 (2012) ("Due to the widespread use of caller identification by emergency services lines, the 'anonymous informant' is no longer very anonymous." (note omitted)).

C. The Majority of Courts After *J.L.* Have Held that the Serious Threat Posed by a Drunk Driver Justifies the Minimal Intrusion Incurred by an Investigatory Stop.

Following *J.L.*, and as Chief Justice Roberts noted in his dissent from denial of certiorari in *Harris*, most courts have interpreted *J.L.* to provide an exception to the anonymous tip rule in the drunk-driving realm under certain circumstances, namely when the anonymous caller provides detailed information including the color, make, model, license plate number, and the location of the suspect vehicle. *See, e.g.*, *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001); *People v. Wells*, 136 P.3d 810 (Cal. 2006); *Bloomingdale v. State*, 842 A.2d 1212 (Del. 2004); *State v. Prendergast*, 83 P.3d 714 (Haw. 2004); *State v. Walshire*, 634 N.W.2d 625 (Iowa 2001); *State v. Crawford*, 67 P.3d 115 (Kan. 2003); *State v. Golotta*, 837 A.2d 359 (N.J. 2003); *State v. Scholl*, 684 N.W.2d 83 (S. Dak. 2004); *State v. Boyea*, 765 A.2d 862 (Vt. 2000); *State v. Rutzinski*, 623 N.W.2d 516 (Wis. 2001). These decisions provide many persuasive justifications for the rule.

Typical of these cases is *Boyea*, 765 A.2d at 862. In *Boyea*, the Vermont Supreme court approved of an investigatory stop when the anonymous caller provided the color, make, model, certain license plate information, and the location of the vehicle, the officer was able to locate the vehicle based on the information, and he thereafter arrested the driver for driving under the influence. 765 A.2d at 863. The Vermont court reasoned that the officer had only two

options: (1) immediately stop the vehicle, which he did; or (2) follow the vehicle and determine whether it was, in fact, driving erratically. But the court also recognized that the second option has several consequences, most of them undesirable: It could result in the officer abandoning the surveillance after not witnessing any behavior, after which the vehicle could cause a serious accident. It could result in a stop after the officer witnessed some corroborating erratic behavior. Or, it could result in a serious accident if the vehicle suddenly veered into oncoming traffic while the officer was observing it. Given these choices, the Vermont Court concluded that the risk factor of a drunk driver was thus more akin to an unpredictable bomb than a firearm, and it determined that the officer's stop in *Boyea* was justified. *Id.* at 867 ("In contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action.").

Most courts have upheld stops based on anonymous tips when two factors are present: (1) the caller precisely describes the vehicle, and (2) the officer is able to identify the vehicle by corroborating those details and locating the vehicle in close proximity to where the call was made. *See, e.g.*, *Bloomingdale*, 842 A.2d at 1221. When these factors are present, "the Fourth Amendment [does] not require the police to idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition." *Rutzinski*, 623 N.W.2d at 523. Instead, "the grave risks posed by an intoxicated highway driver justif[y] the minimal intrusion of a brief inves-

tigatory traffic stop." *Wells*, 136 P.3d at 812. Drunk driving is different from firearm possession in that it does "not concern concealed criminal activity, but rather illegality open to public observation." *Walshire*, 634 N.W.2d at 627. Therefore, "[n]o intimate or confidential relationship is required." *Id.* at 628 (quoting *Boyea*, 765 A.2d at 875). Rather, when a caller witnesses drunk or erratic driving and "quickly reports it using the 9-1-1 system, those factors contribute to his reliability in a manner that relieves the police of the verification requirements normally associated with an anonymous tip." *Golotta*, 837 A.2d at 369.

In contrast, anonymous tips that have been held "insufficiently reliable to create reasonable suspicion have related largely to concealed, possessory crimes." *Bloomingdale*, 842 A.2d at 1219. But "anonymous report[s] of contemporaneously-observed erratic driving [do] not suffer from the same lack of indicia of reliability." *Id.* And while, as was the Court's concern in *J.L.*, some anonymous reports of erratic driving may be the result of an individual's attempt to harass another person by subjecting him to an embarrassing search, the risk of such a false tip is slight compared to the risk of a serious or even fatal accident. *Wheat*, 278 F.3d at 737 ("[S]uch stops are considerably less invasive, both physically and psychologically, than the frisk on a public corner.").

The minority of courts that have reached the opposite conclusion have held that anonymous tips are unreliable because they fail to predict any future behavior. In such states, these tips serve only to locate an alleged impaired driver—but to intervene, a police officer must follow him until they witness the driver

do something unsafe. *See, e.g.*, *McChesney v. State*, 988 P.2d 1071, 1078 (Wyo. 1999).

The majority approach is, in the Amici States' view, the correct one. *J.L.* does not require a police officer acting on an anonymous tip to personally observe any instance of erratic driving before he can conduct an investigatory stop once the officer has corroborated the non-criminal details of the tip.

CONCLUSION

States have made significant progress in combating the dangers of drunk driving. In doing so, they have relied extensively on ordinary citizens to report drivers suspected of driving drunk. An investigatory stop based on an anonymous tip of drunk driving is consistent with this Court's decisions approving sobriety checkpoints and other state policies aimed specifically at curtailing drunk driving. The intrusion of a routine traffic stop is minimal, particularly compared to the magnitude of danger—the potentially fatal unpredictability—imposed on the public by a drunk driver.

Requiring law enforcement officials to personally observe erratic driving behavior before acting upon an anonymous tip would dangerously limit law enforcement's ability to stop a drunk driver before it is too late. At the same time, it would undermine the State's efforts to eradicate drunk driving. This Court should affirm the judgment of the California Court of Appeal and hold that the Fourth Amendment does not require an officer who receives an anonymous tip

regarding a drunk or reckless driver to personally witness any erratic driving before stopping the vehicle. One free swerve might prove one too many.

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AMICUS CURIAE BRIEF

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JOSE P. NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Court of Appeal
of the State of California
First Appellate Division, Division Five

BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amicus curiae National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct.

NACDL was founded in 1958. It has a nationwide membership of approximately 10,000 and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates.

NACDL is dedicated to advancing the proper, efficient, and just administration of justice, including the administration of federal criminal law. NACDL files numerous amicus curiae briefs each year in this Court and other courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. In particular, in furtherance of NACDL's mission to safeguard fundamental constitutional rights, the Association

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[1] Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici, their members, or their counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of the brief.

frequently appears as amicus curiae in cases involving the Fourth Amendment and its state analogues, speaking to the importance of balancing core constitutional search and seizure protections with other constitutional and societal interests. As relates to the issues before the Court in this case, NACDL has an interest in protecting both privacy and associational rights from unwarranted and unreasonable government intrusion.

Amicus curiae the National Association of Federal Defenders ("NAFD") was formed in 1995 to enhance the representation provided to indigent criminal defendants under the Criminal Justice Act, 18 U.S.C. § 3006A, and the Sixth Amendment to the Constitution. NAFD is a nationwide, non-profit, volunteer organization. Its membership is comprised of attorneys who work for federal public and community defender organizations authorized under the Criminal Justice Act. The NAFD seeks to promote the fair adjudication of criminal cases by appearing as amicus curiae in litigation relating to criminal law issues, particularly those affecting indigent defendants in federal court. Through its amicus role, the NAFD endeavors to provide a practical view of the federal criminal justice system from the perspective of counsel representing a majority of those charged with federal crimes throughout the circuits. The NAFD submits this amicus brief because the instant case raises an important constitutional question that will have a significant effect on federal criminal practice due to the frequency of searches of vehicles and passengers following traffic stops of the sort at issue here.

SUMMARY OF ARGUMENT

This Court has held that police cannot stop and question someone unless they have "reasonable suspicion" that he is engaged in a crime. *Terry* v. *Ohio*, 392 U.S. 1 (1968). Tips from known informants often provide such suspicion. The police can judge their reliability from the tipster's past performance and can hold a known tipster responsible for any false information he provides. Anonymous tips, however, come with no such assurance. The police have no way to judge their reliability from the tipster's past performance and they cannot hold anyone responsible if the tips turn out to be false. Recognizing this difference, this Court has allowed police to stop people identified through anonymous tips only when the tip shows "that the tipster has knowledge of concealed criminal activity." *Florida* v. *J.L.*, 529 U.S. 266, 272 (2000). This requires that the police corroborate in some way not just the tip's identification and description of a suspect but, more importantly, its assertion of criminality. To do so, they must witness some suspicious behavior themselves, verify that some significant "predictive information," *id.* at 271, in the tip that would be unknown to an ordinary bystander is true, or find confirmation from independent sources. They cannot rely on the tip's mere level of detail, its repetition, its apparent earnestness, or its seeming urgency to support its reliability.

Because of the nature of road travel, anonymous tips of irregular driving are especially unreliable. There exist many innocent causes for momentary irregular driving, which observers cannot see; people's standards of appropriate driving are, to

some degree, subjective; and people can call in such tips in order to harass. 911 technology, moreover, can provide little assurance of an anonymous tip's reliability.

This Court should not adopt an "irregular driving" exception to the Fourth Amendment. As this Court has recognized, such single-issue exceptions are hard to cabin and tend "to swallow the [Fourth Amendment]." *J.L.*, 529 U.S. at 273. Requiring the police to corroborate anonymous tips' allegations of criminality before stopping drivers would, moreover, dramatically improve their reliability at little cost. It would also safeguard against the risk of police abuse.

ARGUMENT

I. The Fourth Amendment Requires That Police Corroborate An Anonymous Tip That Someone Is Driving Irregularly Before They Stop The Car

A. Uncorroborated, Anonymous Tips Lack The Indicia Of Reliability Necessary To Establish Reasonable Suspicion

In *Terry*, 392 U.S. 1, this Court held that a police officer could briefly stop and question someone he reasonably suspects might be engaged in or about to commit a crime. "[A] tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated," *J.L.*, 529 U.S. at 270 (citing *Adams* v. *Williams*, 407 U.S. 143, 146-147 (1972)), can often furnish such reasonable suspicion. By contrast, "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity," *ibid.*

(quoting *Alabama* v. *White*, 496 U.S. 325, 329 (1990)), and thus cannot provide such suspicion. Only when "an anonymous tip, *suitably corroborated*, exhibits 'sufficient indicia of reliability to provide reasonable suspicion'" can police make an investigatory stop. *Ibid.* (emphasis added) (quoting *White*, 496 U.S. at 327).

This central question—whether an anonymous tip is reliable—turns not so much on the tip's ability "to identify a determinate person" as a possible culprit, *J.L.*, 529 U.S. at 272 (citing 4 W. LaFave, *Search and Seizure* § 9.4(h), at 213 (3d ed. 1996)), as on its ability to "assert[] illegality," *ibid.* That is, an anonymous tip that accurately describes only "a subject's readily observable location and appearance is * * * reliable in [only a] limited sense" and thus "misapprehend[s] the reliability needed for a tip to justify a *Terry* stop." *Ibid.* Such a tip simply fails to show the most necessary element: "that the tipster has [any] knowledge of concealed criminal activity." *Ibid.* It is reliable knowledge of this latter type, not mere knowledge of someone's "location and appearance," that is necessary to provide a police officer reasonable suspicion to stop and question someone about a crime.

In *J.L.*, this Court applied these fundamental principles to invalidate a stop and frisk based on an uncorroborated anonymous tip. There the anonymous tipster reported "that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." 529 U.S. at 268. The police arrived at the bus stop, saw three black males, one of whom was wearing a plaid shirt, "just hanging out," and frisked the one in plaid. *Ibid.* They found

a gun and charged him with firearm violations. *Ibid.* He moved to suppress the gun and on review this Court held the search unlawful because the anonymous tip provided "no predictive information" through which the police could "test the informant's knowledge or credibility" and thus judge the allegation's overall reliability. *Id.* at 271. This Court held in particular that a "bare report," *ibid.*, that a person was committing a crime could not provide reasonable suspicion for a *Terry* stop no matter how well the person himself was identified.

B. Because Of The Nature Of Road Travel, Uncorroborated, Anonymous Tips Are Especially Unreliable

Anonymous tips of irregular driving similarly lack the indicia of reliability necessary to establish reasonable suspicion unless the police independently corroborate any "assertion of illegality," *J.L.*, 529 U.S. at 272, before making a stop. Like the anonymous, "bare report," *id.* at 271, that a particular person was carrying a gun in *J.L.*, an anonymous claim that a particular vehicle is being driven irregularly provides no way for the police to test its reliability, let alone speculate about the cause of any irregular driving. Such tips, as in the present case, typically describe the car, identify its location and direction, and indicate that it is being driven oddly—then offer little more. The anonymous tipster typically has no reason to know why—whether because of fatigue, momentary inattention, surprise, understandable distraction, or other reasons—someone might be driving irregularly and often has no opportunity to observe whether the driver continues to drive irregularly or not. One person's

notion of irregular driving, moreover, may be another's idea of more ordinary, if less than perfect, highway behavior.

In many cases, moreover, the tipster may allege criminality solely in order to harass the driver with an official police traffic stop. As this Court noted in *J.L.* when it rejected the government's entreaty to graft an automatic "firearm exception" onto *Terry*, 529 U.S. at 272, requiring less than reasonable suspicion "would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful" activity. *Ibid.* If the tip "is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity." *Id.* at 275 (Kennedy, J., concurring).

C. Anonymous Tips Cannot Corroborate Themselves

Unless that tip offers special "predictive information" unavailable to most ordinary people that the police can, as in *White*, 496 U.S. at 332, verify in order to establish the tip's overall reliability, the police themselves must corroborate the tip's allegations of criminality by direct observation or perhaps by receiving independent corroboration from others. The tip cannot corroborate itself by simply reporting that the driver was behaving in specific irregular ways or that the anonymous tipster witnessed the irregular driving herself. Nor does elaborate detail or repetition that fails to furnish "predictive information" help. See *United States* v. *Freeman*, No. 12-2233, 2013 WL 5943134, at *5 (2d Cir. Nov. 7, 2013) ("The fact that

the anonymous caller made [two] calls, refused to identify herself, and could not be reached back via phone by the 911 operator merely indicates that there were two anonymous calls from the same individual, instead of just one. It does nothing to bolster her credibility."). More information more emphatically presented cannot justify a stop unless it gives police a meaningful way to test the tipster's reliability.

D. 911 Technology Cannot Boost An Anonymous Tip's Reliability

That an anonymous tip, like the one here, comes in on a 911 line provides no boost to the tip's reliability either. For starters, although police do now have the ability to trace the number from which a 911 call originated, see 47 C.F.R. § 64.1601(d)(4)(ii), many do not do so, see Dary Fiorentino et al., NHTSA, *Programs Across The United States That Aid Motorists In The Reporting Of Impaired Drivers To Law Enforcement*, tbls. 2-11 (2007), *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fwww.nhtsa.gov%2Flinks%2Fsid%2F3674ProgramsAcrossUS%2F3674FinalReport2.pdf&ei=LJaKUuOnKpOl4AOf1YGAAg&usg=AFQjCNGja8o-We9_aN9sGuvqtjXYqZGFSQ&sig2=o-iA1RcR_UCxoLkABd4-YA&bvm=bv.56643336,d.dmg (NHTSA, *Programs In Reporting Of Impaired Driving*) (indicating that 15 of the states that responded to federal request for information did not track the 911 calls they received). Many leading law enforcement agencies, including the Department of Homeland Security and the police departments of New York, Los Angeles, Chicago, Houston, Toronto,

and Vancouver, have, moreover, adopted parallel reporting systems that make it impossible for them to identify the number from which tips are made. TipSoft Online, https://www.tipsoftonline.com/index.aspx (last visited Nov. 12, 2013). They advertise that fact in order to encourage people to make tips they otherwise would not because the potential tipsters distrust 911 technology's ability to safeguard their true anonymity.

Second, as lower courts have noted, although a tipster who makes a 911 call on a prepaid cell phone may give the police access to its number, the police have no way then to trace it. See, e.g., *Freeman*, 2013 WL 5943134, at *5 (noting that "[w]hile a landline is necessarily registered to a particular person and particular place, * * * mobile phones * * * prepaid with cash[are] strip[ped] of all identifying information"). Industry data show that postpaid mobile phone use is now declining while prepaid mobile use is growing rapidly. John Tweardy et al., Deloitte, *The Changing Face of Prepaid* (May 19, 2011), http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_TMT_The%20Changing%20Face%20of%20Prepaid_051911.pdf. In fact, 25 percent of mobile phone users in this country now use prepaid phones, New Millennium Research Council, *Experts: "Middle-Class Mainstreaming" of Prepaid Wireless Could Push One Out of Three U.S. Consumers to No-Contract Cell Phones in Next 12 Months* (July 19, 2012), http://newmillenniumresearch.org/news/071912_NMRC_prepaid_trends_news_release.pdf, which are often purchased specifically to prevent the police from identifying the source of the call, see Gordon A. Gow & Jennifer Parisi, *Pursuing the Anonymous*

User: Privacy Rights and Mandatory Registration of Prepaid Mobile Phones, 28 Bull. of Sci., Tech. & Soc'y 60, 60 (2008); Jim Dwyer, *It's Not Just Drug Dealers Who Buy Prepaid Phones*, N.Y. Times, May 28, 2010, http://www.nytimes.com/2010/05/30/nyregion/30about.html ("Usually, a prepaid cellphone is a dead end for law enforcement."). Their use makes it difficult, if not impossible, for the police to determine that a tip has the reliability necessary to justify a *Terry* stop.

Third, even if the police use 911 technology to record the number from which an anonymous call originates and can later find out to whom the phone is registered, the caller is unlikely to realize that he is not anonymous at the time of the call. Unless the police inform him when he calls that they may later be able to find out who he is—a practice that would greatly discourage anonymous tipping—the caller will still behave as if he "has not placed his credibility at risk and can lie with impunity." *J.L.*, 529 U.S. at 273 (Kennedy, J., concurring). It is the tipster's belief in anonymity, not its reality, that will control his behavior.

Fourth, even if the would-be anonymous tipster realizes the police "have his number," he is unlikely to change his behavior unless he also believes that the police will pursue callers whose tips prove inaccurate, regularly find them, and be able to punish them for their behavior. In cases short of outrageous, willful pranks, however, none of these assumptions is likely true. No data indicate that police spend time and resources chasing tipsters for allegations of irregular driving that do not result in arrest. For one thing, such cases would be hard to

prosecute, for the state would have to prove that the tipster actually did not see what he reported, not just that the driver of the car he reported was blameless at some later point in time. And, as the North Carolina Supreme Court has noted in exactly this context, calling in a mistaken, even objectively false, tip is often not against the law:

> making a false statement to the police, standing alone, is not against an individual's penal interest because doing so is not a crime. To be charged with the crime of making a false report to law enforcement agencies or officers, the evidence must show that the person willfully made a false or misleading statement to a law enforcement agency or officer *for the purpose of interfering with the law enforcement agency or hindering or obstructing the officer in the performance of his duties*. N.C.G.S. § 14–225 (1994).

State v. *Hughes*, 539 S.E.2d 625, 629 (N.C. 2000).

To make matters worse, anonymous tipsters can easily disguise their numbers as someone's else's. As described by the FCC, "[u]sing a practice known as * * * 'spoofing,' callers can deliberately falsify the telephone number and/or name relayed as * * * Caller ID information to disguise the identity of the calling party." FCC, *Caller ID and Spoofing*, http://www.fcc.gov/guides/caller-id-and-spoofing (last visited Nov. 13, 2013). Such calls are a serious source of fraud. *Ibid.* They have also enabled the dangerous practice of "swatting." As the FBI describes it:

> The distraught-sounding man told the 9-1-1 operator he shot a family member and might

> kill others in the house. A SWAT team was urgently dispatched to the address corresponding to the caller's phone number. But when the tactical team arrived, ready for a possible violent encounter, they found only a surprised family panicked by the officers at their door.
>
> It's called "swatting"—making a hoax call to 9-1-1 to draw a response from law enforcement, usually a SWAT team. The individuals who engage in this activity use technology to make it appear that the emergency call is coming from the victim's phone. Sometimes swatting is done for revenge, sometimes as a prank. Either way, it is a serious crime, and one that has potentially dangerous consequences.

F.B.I., *The Crime of 'Swatting': Fake 9-1-1 Calls Have Real Consequences* (Sept. 3, 2013), http://www.fbi.gov/news/stories/2013/september/the-crime-of-swatting-fake-9-1-1-calls-have-real-consequences. As swatting shows, a 911 tipster can not only easily keep his phone number from the police but, in fact, also easily fool them into identifying him as someone else entirely, whom they might reasonably find, under the circumstances, inherently credible.[2]

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[2] The practice is quite widespread. Pranksters have swatted Tom Cruise, Kim Kardashian, Ryan Seacrest, Miley Cyrus, Magic Johnson, Clint Eastwood, Justin Timberlake, Selena Gomez, Russell Brand, and Rihanna, among others, Adrianne Jeffries, *Meet 'swatting,' the dangerous prank that could get someone killed*, The Verge (Apr. 23, 2013, 10:00 AM) http://www.theverge.com/2013/4/23/4253014/swatting-911-

II. This Court Should Not Adopt An Irregular Driving Exception To The Fourth Amendment

A. Empirical Evidence And Practical Concerns Militate Strongly Against Such An Exception

In *J.L.*, this Court declined the government's invitation to create "a 'firearm exception'" to "standard *Terry* analysis." 529 U.S. at 272. It acknowledged that "[f]irearms are dangerous, and extraordinary dangers sometimes justify unusual precautions." *Ibid.* It found, however, that "*Terry*'s rule, which permits protective police searches on the basis of reasonable suspicion rather than demanding that officers meet the higher standards of probable cause, responds to this very concern." *Ibid.* In other words, *Terry*'s calculus, which looks to the "totality of the circumstances," *White*, 496 U.S. at 328, to test a tip's reliability, contained sufficient flexibility to accommodate any valid governmental interests.

This Court recognized, moreover, that "an automatic * * * exception would rove too far." *J.L.*, 529 U.S. at 272. No one, it noted, "could * * *

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prank-wont-stop-hackers-celebrities; *Paris Hilton Swatted Again*, TMZ (May 19, 2013, 5:00 AM), http://www.tmz.com/2013/05/19/paris-hilton-repeat-swatting-victim/, the last four all in a single week, *ibid.* And Paris Hilton has been swatted at least twice. *Ibid.* Nor are celebrities the only targets. People have used swatting to punish investigative journalists, Adrianne Jeffries, The Verge, *supra*, and politicians, including those who have proposed laws against swatting, Catherine Saillant, *L.A. City Council Strikes Back Against 'Swatting' Pranks*, L. A. Times, Nov. 2, 2013, http://www.latimes.com/local/la-me-1103-swatting-calls-20131103,0,2147628.story#axzz2kBehTQrs.

securely confine such an exception to firearms," *ibid.*, and it predicted that allowing "*Terry* [stops] on the basis of bare-boned tips about guns" would lead to stops "based on bare-boned tips about narcotics," *id.* at 273. "'[T]he reasons for creating an exception in one category [of Fourth Amendment cases],'" it feared, "'can, relatively easily, be applied to others,' thus allowing the exception to swallow the rule." *Ibid.* (quoting *Richards* v. *Wisconsin*, 520 U.S. 385, 393-394 (1997)) (second emendation in original).

Petitioners demonstrate why it would be equally dangerous to create an automatic "irregular driving" exception to the Fourth Amendment and why there is no need to do so. As they argue, the factors some lower courts have seized upon to justify such an automatic exception, including the size of the risk, such tips' degree of reliability, the relative difficulty of corroboration, and the relative intrusiveness of an automobile stop, actually cut against, not in favor of, overriding the Fourth Amendment. Pet. Br. 30-38. Several other reasons point powerfully to this same conclusion.

For one thing, even when someone sees an act of irregular driving, the cause is likely not one that is illegal and continuing, that is, one for which police could make an arrest without witnessing unsafe driving themselves. In one of its studies, the National Highway Traffic Safety Administration ("NHTSA") reports examples of erratic driving with innocent explanations, including the following:

> The officer observed a vehicle weaving, weaving across lane lines, varying speed to as low as 38 mph in a 55 mph zone, and driving on the shoulder. He found that the vehicle's "check

> engine" light had come on, which startled the driver, who then dropped her purse on the floorboard and still attempted to drive while retrieving the spilled items.

Jack W. Stuster, NHTSA, *The Detection of DWI at BACs Below 0.10*, at 29-30 (Sept. 1997), *available at* http://isddc.dot.gov/OLPFiles/NHTSA/007372.pdf (*The Detection of DWI at BACs Below 0.10*). Other common possibilities include momentary inattention while adjusting the radio, justifiable distraction from a dangerous insect, swerving quickly to miss an animal running onto the road, and a flat tire or other car trouble.

Second, requiring the police to corroborate anonymous tips of irregular driving greatly improves such tips' reliability at little cost. NHTSA has found, for example, that with proper training police can use 24 visual cues to identify appropriate targets for drunken driving stops. See *The Detection of DWI at BACs Below 0.10*, at i, 30-31. Depending on the number of simple cues observed, varying from one to five or more, the percent of DWIs found in traffic stops ranged from 20 to 83 percent. See *id.* at 31 tbl. 10 (calculating second column, "Numbers of DWIs," for each "Number of Cues Observed" in first column as percentage of fourth column, "Number of All Cases"). There is good reason to believe that the untrained public does much worse. See *id.* at 9 tbl. 2 (finding that even experienced, but untrained, police could visually identify drunken driving only 34 percent of the time they conducted a *Terry* stop) (calculated by adding entries in column three, "Percent of Drivers Stopped," for BAC ranges above .08 percent, the standard legal threshold).

Such improvements in reliability come, moreover, at little cost. A NHTSA study has found that of all the states participating in a self-reported study, North Carolina, which requires police to corroborate anonymous tips before stopping a driver for suspected drunken driving, see *State* v. *Hughes*, 539 S.E.2d 625, 631 (N.C. 2000) (rejecting uncorroborated anonymous tip as unreliable because "the information provided did not contain the range of details required * * * to sufficiently predict defendant's specific future action"); *State* v. *Peele*, 675 S.E.2d 682, 687 (N.C. Ct. App. 2009) (rejecting as unreliable anonymous tip of possible impaired driving corroborated by police observation that the "defendant on a single occasion float[ed] to the dotted line and then float[ed] back to the fog line"), has the highest "percentage of calls resulting in arrest" at "51%-75%," NHTSA, Programs In Reporting Of Impaired Driving, tbl. 8. The same study indicates that the "[a]verage time between call and stoppage of vehicle" for North Carolina, only "15 minutes," is in the middle for all states self-reporting this statistic. *Ibid.* Requiring police corroboration, in other words, adds little time and increases the likelihood that those stopped deserve to be arrested.

In addition to these anecdotes, much research has shown that conditions other than inebriation can more commonly lead to irregular driving. Mothers Against Drunk Driving estimates, for example, that "about one out of every two thousand trips are taken by those who are driving under the influence of alcohol," MADD, *About Drunk Driving*, http://www.madd.org/drunk-driving/about/ (last visited Nov. 12, 2013), a rate of approximately .05 percent. By contrast, NHTSA estimated that in 2007

11 percent of drivers used cell phones while driving at any daylight moment. NHTSA, *Traffic Safety Facts Research Note: Driver Electronic Device Use in 2007* (2008), available at http://www.nsc.org/safety_road/Distracted_Driving/Documents/Driver%20Electronic%20Device%20Use%20in%202007.pdf. An estimated 45 percent of these used hands-free devices, *id.* at 5, the use of which is not illegal in any state, see Insurance Institute for Highway Safety, *Distracted Driving: Cellphone Use And Texting*, Nov. 2013, http://www.iihs.org/iihs/topics/laws/cellphonelaws?topicName=distracted-driving. The other 55 percent used hand-held phones, the use of which during driving only 12 states make illegal. *Ibid.* Both types of devices lead, moreover, to the same degree of driving impairment. See David L. Strayer et al., *A Comparison of the Cell Phone Driver and the Drunk Driver*, 48 Hum. Factors 381, 388 (2006); Suzanne P. McEvoy et al., *Role of Mobile Phones in Motor Vehicle Crashes Resulting in Hospital Attendance: A Case-Crossover Study*, 331 Brit. Med. J. 428, 428-430 (2005); Donald A. Redelmeier & Robert J. Tibshirani, *Association Between Cellular-Telephone Calls and Motor Vehicle Collisions*, 336 New Eng. J. Med. 453, 455 (1997).

Several studies show, moreover, that this large group of cell phone users is just as impaired while driving as those who are legally drunk. One performance study reports "that when driving conditions and time on task are controlled for, the impairments associated with using a cell phone while driving can be as profound as those associated with a blood alcohol level of 0.08%." Strayer, 48 Hum. Factors at 390. Another epidemiological study reports that the "relative risk [of being in a traffic

accident while using a cell phone] is similar to the hazard associated with driving with a blood alcohol level at the legal limit." Redelmeier & Tibshirani, 336 New. Eng. J. Med. at 456; see also Peter C. Burns et al., *How Dangerous is Driving with a Mobile Phone? Benchmarking the Impairment to Alcohol*, Transport Res. Libr. Rep. 547 (2002). One recent study even reports that one of the most common and most accepted of driver behaviors—talking to a passenger in the car—was slightly more cognitively distracting than using a hands-free cellphone while driving. David L. Strayer et al., AAA Foundation for Traffic Safety, *Measuring Cognitive Distraction in the Automobile* 28 (2013), https://www.aaafoundation.org/sites/default/files/MeasuringCognitiveDistractions.pdf.

B. An Irregular Driving Exception Would Increase The Risk Of Police Abuse

In addition to empowering malicious private individuals to harness the police to harass others whom they dislike, the police themselves can use anonymous tips to try to bring the full power of the law against those whom they want to punish. Even without the exception, such cases already appear to be unfortunately frequent. The following represent a sample drawn from the case law and public reports.

In one case, police received a phoned-in tip that the city's mayor was possibly driving while under the influence of alcohol. They stopped him and, although he passed a field sobriety test, the mayor felt he needed to have his attorney immediately drive him to the local hospital for a more authoritative blood-alcohol test at his own expense, which showed a blood alcohol level of .02 percent—75 percent below

the legal limit. See *Sheridan Mayor Passes DUI Test After Phoned-in Tip*, Billings Gazette, July 10, 2005, http://billingsgazette.com/news/state-and-regional/wyoming/sheridan-mayor-passes-dui-test-after-phoned-in-tip/article_4255521e-805f-57a3-9bfd-9b5774005621.html. After investigation, the city discovered that it was a police officer who had called in the anonymous tip, allegedly to smear the mayor, see *Sheridan Police Chief Recommends Firing Officers Who Pulled Over Mayor*, Billings Gazette, Oct. 23, 2005, http://billingsgazette.com/news/state-and-regional/wyoming/sheridan-police-chief-recommends-firing-officers-who-pulled-over-mayor/article_7d776364-ae49-51b9-9d9a-6261938c8293.html.

In another case, a police chief of a small town in North Carolina who was driving off-duty with his girlfriend saw a car parked outside a local bar that he recognized as belonging to someone convicted of a DWI years before. See *State* v. *Watkins*, 463 S.E.2d 802, 803 (N.C. Ct. App. 1995). The car's owner had already called his wife to tell her that he had had too much to drink and would not be coming home. *Ibid.* The police chief then went to his girlfriend's home to make a call to the bar to tell the car's owner "that there was an emergency" at his home and that "there was an ambulance at [his] house." *Id.* at 803. The chief "intended [both false statements] to cause the defendant ... to leave the [bar] and to get on the public road, so that he could be arrested for driving while impaired." *Ibid.* The police chief then instructed another police officer to call the sheriff's office and report the "suspicious vehicle." *Id.* at 804. When the dispatcher received this "anonymous tip," *ibid.*, he sent an officer and the driver was arrested. Only when the police chief's "trickery," *ibid.*, came to

light years later (through the testimony of his former girlfriend) was the defendant able to have his conviction reversed.

In another well-reported incident, a person on supervised release fell afoul of his former employer after sending a copy of the employer's indictment for wire fraud to the employer's girlfriend. *Bazzi* v. *City of Dearborn*, 658 F.3d 598, 601 (6th Cir. 2011). The former employer then enlisted a Dearborn police officer to call another officer on duty and tell him to listen to someone who would shortly call him. *Ibid.* The former employer then called the second officer ten times within one hour and, without identifying himself, told the officer that his former employee was driving a particular car at a particular location and was carrying guns and drugs. *Ibid.* He even reported that his cousin had seen the driver with a gun. *Ibid.* The second officer then pulled the former employee over on the basis of the anonymous tip, searched the car, and found nothing. *Ibid.* As a result of the stop, which another officer falsely wrote up as due to "suspicion of driving a stolen vehicle," *ibid.*, the driver was wrongly arrested for violating the terms of his supervised release, *ibid.*

Recent revelations that law enforcement officers have been manufacturing tips in drug prosecutions in order to hide the real source of their information highlights this concern of law enforcement misuse. According to these reports, the Special Operations Division ("SOD") of the United States Drug Enforcement Administration ("DEA"), which receives National Security Agency and other intelligence agency intercepts, has directed law enforcement officers who will use the information to "[r]emember

that the utilization of SOD cannot be revealed or discussed in any investigative function." See John Shiffman & Kristina Cooke, *U.S. Directs Agents to Cover Up Program Used to Investigate Americans*, Reuters, Aug. 5, 2013, http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805. Law enforcement agents are told "to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony" and to then use "normal investigative techniques to recreate the information provided by SOD." *Ibid.* As one former DEA agent described the practice: "It's just like laundering money—you work it backwards to make it clean." *Ibid.*

One easy way of doing so is for the agent to manufacture a tip—presumably an anonymous one in order to avoid discovery. "One current federal prosecutor [recounted] how agents were using SOD tips after a drug agent misled him":

> In a Florida drug case he was handling, the prosecutor said, a DEA agent told him the investigation of a U.S. citizen began with a tip from an informant. When the prosecutor pressed for more information, he said, a DEA supervisor intervened and revealed that the tip had actually come through the SOD and from an NSA intercept.
>
> "I was pissed," the prosecutor said. "Lying about where the information came from is a bad start if you're trying to comply with the law because it can lead to all kinds of problems with discovery and candor to the court." The prosecutor never filed charges in the case because he lost confidence in the investigation, he said.

Shiffman & Cooke at 1. As these examples show, allowing police to justify a stop and seizure on the basis of a non-corroborated anonymous tip may in some cases prove too tempting. If only to uphold the integrity of the law enforcement process, this Court should decline to create an "automobile exception" to the Fourth Amendment.

CONCLUSION

This Court should reverse the judgment of the California Court of Appeal.

Respectfully submitted.

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